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In The

Supreme Court of the United States

October Term, 1995

JOYCE McCLARAN, Director, Child Support Services, Tennessee Department of Human Services,

Petitioner,

v.

PATRICIA DAVIS, ELLA LARITA LILLARD, PATRICIA NORTHCUTT, and MARIETTA TURNER, on their own behalves and on behalf of all persons similarly situated,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Tennessee

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Title IV of the Social Security Act, enacted by Congress pursuant to its spending power, provides that, as a condition of receiving federal funds, a state must have in effect a plan for child support enforcement services under Part D of Title IV and operate a program in "substantial compliance" with that plan. If Congress intends to impose a condition on the grant of federal funds, it must do so unambiguously. Did Congress, in enacting Title IV-D, unambiguously confer an enforceable right on all individuals eligible for Title IV-D child support enforcement services, for violation of which 42 U.S.C. § 1983 provides a private remedy?

PARTIES TO THE PROCEEDING

Petitioner Joyce McClaran, Director of the Child Support Services Division of the Tennessee Department of Human Services (DHS), was defendant-appellant in the proceeding below. Also initially named as defendants were Victor Johnson, District Attorney General for the 20th Judicial District, and the Metropolitan Government of Nashville and Davidson County, Tennessee. The claims against defendants Johnson and Metropolitan Government were dismissed while this case was pending in the Tennessee Court of Appeals.

Respondents Davis, Lillard, Northcutt, and Turner, custodial parents residing in Davidson County, Tennessee, were plaintiffs-appellees below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a Writ of Certiorari to review the judgment entered by the Supreme Court of Tennessee in this proceeding.

OPINION BELOW

The opinion of the Supreme Court of Tennessee is reported at 909 S.W.2d 412 (Tenn. 1995) and is reprinted in the Appendix ("App.") to this petition at App. 1-27.

STATEMENT OF JURISDICTION OF THE COURT

The judgment of the Tennessee Supreme Court was entered on October 30, 1995. App. 1. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

42 U.S.C. § 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities, secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Title IV of the Social Security Act, 42 U.S.C. §§ 601-687 (pertinent text is set out in the appendix at App. 28-97).

45 C.F.R. Parts 302, 303, 305 (pertinent text is set out in the appendix at App. 98-247).

STATEMENT OF THE CASE

This case involves an action brought under 42 U.S.C. § 1983 by four custodial parents, seeking to force the Tennessee Department of Human Services to provide the child support enforcement services to which plaintiffs claim an enforceable entitlement under Title IV-D of the Social Security Act, 42 U.S.C. §§ 651-669. In the decision below the Tennessee Supreme Court concluded that all persons eligible for Title IV-D child support services, but failing to receive such services, may maintain actions under § 1983 for individual relief, even if the State operates a child support services program in substantial compliance with the provisions of Title IV-D.

Statement of the Facts

Respondents Davis, Lillard, Northcutt, and Turner are custodial parents of minor children who allege that they are eligible for, but have not received, certain child support enforcement services under Title IV-D.[1] All are residents of Davidson County, Tennessee. Davis claims

[1] This case was decided on a motion to dismiss for failure to state a claim, for purposes of which all well pleaded material factual allegations of the complaint are to be taken as true. *Dobbs v. Guenther*, 846 S.W.2d 270, 273 (Tenn.App. 1992).

that, although the Child Support Services Division of the Tennessee Department of Human Services (DHS) assisted her in establishing paternity and a child support obligation with respect to one of her children, DHS has made no effort to enforce the support order and has failed to provide assistance in establishing paternity and a support obligation with respect to a second child. R. 9-10. Lillard and Northcutt allege that DHS has failed to assist them in enforcing existing child support obligations owed by the fathers of their respective children. R. 10-11. Turner alleges that, after assisting her in filing a petition under the Uniform Reciprocal Enforcement of Support Act, DHS has done nothing further to enforce Turner's existing child support order. R. 11-12. Respondents allege that these failures are principally due to the fact that the Davidson County child support program is grossly understaffed. R. 1.[2] Petitioner McClaran, Director of the Child Support Services Division of DHS, has, according to respondents, failed to ensure the provision to Davidson County residents of child support services meeting the requirements of Title IV-D. R. 1,8. It is also alleged that

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[2] The Child Support Services Division of the Tennessee Department of Human Services, of which petitioner McClaran is Director, is the single state agency responsible for the provision of Title IV-D child support services throughout Tennessee. Because DHS had contracted with Victor S. Johnson, III, the District Attorney General for Davidson County, and the Metropolitan Government of Nashville and Davidson County (Metro) to provide Title IV-D services to Davidson County residents, the complaint named these parties as defendants. During the course of the proceedings below this contract expired, mooting the claims against Johnson and Metro. The parties entered into agreed orders dismissing Johnson and Metro. See App. 3, n. 1.

the federal government has taken no action to ensure the provision of such services to the residents of Davidson County. R. 8. Respondents sought injunctive relief under 42 U.S.C. § 1983, requiring DHS "to provide child support services as required by Title IV-D of the Social Security Act." R. 13.

Proceedings Below

On December 31, 1992, petitioner McClaran filed a motion to dismiss the complaint for failure to state a claim upon which relief could be granted. R. 41. On February 22, 1993, the trial court granted the motion to dismiss, holding that the plaintiffs "have no private right of action to enforce any rights allegedly arising under either Title IV-D and/or 42 U.S.C. § 1983."

The Tennessee Court of Appeals, in an opinion entered on December 10, 1993, reversed that judgment, finding that Title IV-D creates enforceable rights whose private enforcement under 42 U.S.C. § 1983 is not foreclosed, and concluding that plaintiffs may utilize § 1983 to enjoin the State to bring its child support program into substantial compliance with the provisions of Title IV-D.[3]

Petitioner McClaran then filed with the Tennessee Supreme Court an application for permission to appeal, asserting that the Court of Appeals was in error in that

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[3] As a condition of receiving federal funding under the Aid to Families with Dependent Children (AFDC) program (Title IV-A), states are required to "[have] in effect a plan approved under [Title IV-D] and operate [ ] a child support program in substantial compliance with such plan." 42 U.S.C. 602(a)(27).

Title IV-D did not create enforceable rights and, in any event, that Congress had foreclosed private enforcement of any alleged rights under 42 U.S.C. § 1983 by establishing a comprehensive remedial scheme within Title IV-D itself. The Tennessee Supreme Court granted the application, noting that the issue presented – the availability of § 1983 to enforce the provisions of Title IV-D – "has caused a split among the jurisdictions that have considered it." App. 4.

In an opinion filed on October 30, 1995, the Tennessee Supreme Court affirmed the Court of Appeals' decision with respect to the existence of privately enforceable rights under Title IV-D, but posed the following issue: whether the plaintiffs' use of § 1983 is limited to enjoining the State to achieve "substantial compliance" with the provisions of Title IV-D, which would not necessarily guarantee relief in an individual case; or, rather, whether plaintiffs may use § 1983 to obtain relief in their individual case, in the form of the provision of specified child support services, regardless of whether the State's child support program is in "substantial compliance" with Title IV-D. App. 16-17. In its analysis of that issue, the court found dispositive the implementing regulations at 45 C.F.R. § 303, which it characterized as containing specific, mandatory requirements constituting "direct obligations" on the state Title IV-D agency, enforceable in each individual case. Accordingly, the Tennessee Supreme Court held that a plaintiff may bring an action pursuant to § 1983 for individual relief to enforce the State's "direct obligations" to that plaintiff under Title IV-D, and that this right exists even if the State is in "substantial compliance" with the requirements of Title IV-D. App. 20.

REASONS FOR GRANTING THE WRIT

The decisions of the lower courts, in their struggle to analyze the question of whether a private action under 42 U.S.C. § 1983 is available to enforce Title IV-D, reflect fundamental division and confusion, which are both typified and exacerbated by the decision of the Tennessee Supreme Court. That opinion squarely presents the central features of the enforceable rights analysis that have troubled and divided the lower courts.

This confusion has resulted in the formulation of differing and incompatible rules among the lower courts. The resulting split of authority ranges from rulings that (1) Title IV-D does not establish enforceable rights that can be vindicated in a private action under § 1983[4]; to (2) the view that an enforceable right exists, with the plaintiff's use of § 1983 limited in scope to enjoining a state to improve overall Title IV-D program performance to a level of substantial (i.e., 75%) compliance[5]; to (3) the most

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[4] Even those courts rejecting the availability of § 1983 to enforce Title IV-D have done so on the basis of two differing rationales, with the Eleventh Circuit finding that no enforceable right is created by the statute, *Wehunt v. Ledbetter*, 875 F.2d 1558 (11th Cir. 1989), and the Sixth Circuit finding the existence of an enforceable right but concluding that a private action under § 1983 is precluded by a comprehensive statutory remedial scheme. *Carelli v. Howser*, 923 F.2d 1208 (6th Cir. 1991). *See also Mason v. Bradley*, 789 F.Supp. 273 (N.D. Ill. 1992) (no enforceable private right).

[5] *Freestone v. Cowan*, 68 F.3d 1141 (9th Cir. 1995); *King v. Bradley*, 829 F.Supp. 989 (N.D. Ill. 1993); *see also Howe v. Ellenbecker*, 8 F.3d 1258 (8th Cir. 1993) (finding that Title IV-D creates an enforceable right, but providing no clarity regarding the contours of the "right" and the scope of available § 1983 relief).

expansive formulation, extending the contours of rights enforceable in a § 1983 action to encompass claims for full compliance with Title IV-D's provisions for child support services in each individual case.[6]

In addition to compounding the split among the lower courts, the Tennessee Supreme Court's enforceable rights analysis conflicts with this Court's consistent holding in cases involving federal-state funding statutes enacted by Congress pursuant to its spending power, as was Title IV[7], that "if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981); *see also Suter v. Artist M.*, ___ U.S. ___ 112 S.Ct. 1360, 1366 (1992). The lower court's analysis is further flawed by its improper reliance on administrative regulations, reflecting a view that such regulations *alone* can create a right enforceable in a § 1983 action, in disregard of this Court's rule that, in determining whether a statute creates enforceable rights, the linchpin of the analysis is congressional intent. *See e.g., Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453 U.S. 1, 13 (1981).

The existing confusion among the lower courts results in a nationwide federal-state cooperative program

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[6] *Albiston v. Maine Commissioner of Human Services*, 7 F.3d 258 (1st Cir. 1993); *Davis v. McClaran*, 909 S.W.2d 412 (Tenn. 1995). The decision of the Tennessee Supreme Court places the state in conflict with its own federal circuit on the issue of the availability of a § 1983 action to enforce Title IV-D. *See Carelli v. Howser*, 923 F.2d 1208 (6th Cir. 1991).

[7] *See King v. Smith*, 392 U.S. 309 (1968).

in which the participating states are subject to widely diverging levels of obligation, and with respect to which potential Title IV-D clients stand in varying legal postures, either without substantive rights or with enforceable rights of differing dimensions. Moreover, the dangerous legacy left by the Tennessee Supreme Court's enforceable rights analysis, if left unchecked by this Court, is manifest. The analysis confers new federal entitlements on each and every AFDC recipient and non-AFDC recipient who requests IV-D services[8], with each such individual a potential § 1983 plaintiff able to force the state to provide her with all applicable child support enforcement services, in full and strict conformity with Title IV-D's provisions and regulations. Such an interpretation imposes massive and largely indeterminate obligations on the states.

In sum, there is a pressing need for authoritative resolution by this Court of the issues presented by this case.

I. THE LOWER COURTS ARE IN CONFLICT AS TO THE AVAILABILITY OF A § 1983 ACTION TO ENFORCE TITLE IV-D.

In the fifteen years since *Maine v. Thiboutot*[9] generally established that 42 U.S.C. § 1983 may be invoked as a vehicle to vindicate purely statutory rights, the courts

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[8] Child support enforcement services under Title IV-D are available to non-AFDC families that request them, as well as to AFDC recipients. 42 U.S.C. § 654(6). App. 85.

[9] 448 U.S. 1 (1980).

have struggled with the questions of what constitutes a statutory "right", whether it is privately enforceable, and how to determine and define the scope of the right conferred. It is a debate that has actively engaged this Court, in a series of decisions from *Pennhurst*[10] through *Wright*[11] and *Wilder*[12] to *Suter.*[13] To date, however, there has been no resolution by the Court of the issue presented in this case – one that has divided the lower courts: whether Title IV-D of the Social Security Act, which requires that, as a condition of federal funding, a state IV-D program operate in "substantial compliance" with the requirements of the statute, is enforceable in an action pursuant to § 1983.

The Statutory Framework

Title IV-A of the Social Security Act, 42 U.S.C. §§ 601-617, established the federal Aid to Families with Dependent Children (AFDC) program, a voluntary, cooperative federal-state effort administered by participating states. The AFDC program provides federal funds to states that have implemented plans to provide assistance to needy families with children who are deprived of parental support through death, disability, or desertion. As a condition of receiving federal funds, a state must have a federally approved AFDC plan, the requirements

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[10] *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1 (1981).

[11] *Wright v. City of Roanoke Redevelopment and Housing Authority*, 479 U.S. 418 (1987).

[12] *Wilder v. Virginia Hospital Association*, 496 U.S. 498 (1990).

[13] *Suter v. Artist M.*, ___ U.S. ___, 112 S.Ct. 1360 (1992).

for which are set out in 42 U.S.C. § 602. 42 U.S.C. § 603(a). App. 28, 60. One such requirement is that the state have in effect a plan for child support enforcement, approved by the Secretary of Health and Human Services (HHS) under part D of Title IV (§ 651-669), and "operate[ ] a child support program in substantial compliance with such plan." 42 U.S.C. § 602(a)(27). App. 53. The required provisions of a state IV-D plan are set out at 42 U.S.C. § 654.[14] App. 83. The Secretary of HHS, charged with conducting periodic audits of state performance under Title IV-D, 42 U.S.C. § 652(a)(4), has defined "substantial compliance" with IV-D state plan requirements as compliance in 75% of the cases reviewed. 45 C.F.R. § 305.20. App. 235.

"[I]f a State's program operated under [Title IV-D] is found as a result of a review conducted [by the Secretary of HHS] . . . not to have complied substantially with the requirements of [Title IV-D] . . . the amounts otherwise payable to the State [under Title IV-A] . . . shall be reduced. . . . " 42 U.S.C. § 603(h)(1). App. 66. Congress established a three-tiered reduction in funding based on the number of times HHS finds that a state has failed

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[14] Under Title IV-D, a state's child support enforcement program is to include a variety of services, available to both AFDC recipients and, upon application, non-AFDC families, including establishment of paternity, establishment and enforcement of child support obligations, and location of absent parents. 42 U.S.C. § 654. AFDC recipients are required to assign their rights to support payments to the state. 42 U.S.C. § 602 (a)(26)(A). Title IV-D programs receive federal funding in the form of reimbursement for a percentage of the state's costs of administering the IV-D program. 42 U.S.C. § 655(a)(2).

substantially to comply with Title IV-D, coupled with an opportunity for the state to submit corrective action plans that operate to suspend and waive funding reductions. 42 U.S.C. § 603(h)(1). Under these provisions, HHS is required to reduce federal funding by one to two percent upon the first finding of a failure of substantial compliance, by two to three percent upon the second consecutive such finding, and by three to five percent upon the third or subsequent consecutive such finding. *Id.*

A state, however, may voluntarily submit a corrective action plan containing steps necessary to achieve substantial compliance, which operates to suspend the reduction. 42 U.S.C. § 603(h)(2)(A). App. 67. If the corrective action plan is successful, the reduction is waived. 42 U.S.C. § 603(h)(2)(C)(i). App. 68. If unsuccessful, the state's federal funding will be reduced at the time that HHS determines that the corrective action plan has failed to achieve substantial compliance. 42 U.S.C. § 603(h)(2)(C)(iii). App. 68. There is no reduction for the time period in which the State has undertaken to implement its corrective action plan, even if the state is ultimately unsuccessful. *Id.* If a state, however, chooses to forego implementing a corrective action plan, the reduction is applied as if no suspension had occurred. 42 U.S.C. § 603(h)(2)(C)(ii). App. 68.

A. The Lower Courts Have Engaged In Conflicting Enforceable Rights Analyses.

The Court in *Maine v. Thiboutot*, 448 U.S. 1 (1980), did not elaborate a standard for determining, in the context of a specific statute, whether § 1983 provides a cause of

action. Since *Thiboutot*, the Court has allowed § 1983 actions for federal statutory violations only if the statute meets two requirements, the first of which is that the statute must create "enforceable rights." *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1 (1981). The results reached by the lower courts that have examined the issue of whether Title IV-D creates enforceable rights within the meaning of § 1983 reflect clashing analytical formulations, resulting in cases fundamentally at odds with one another.

In *Wehunt v. Ledbetter*, 875 F.2d 1558 (11th Cir. 1989), *cert. denied*, 494 U.S. 1027 (1990) AFDC recipients brought suit under § 1983 seeking to force the state to provide them with child support enforcement services under Title IV-D. The Eleventh Circuit focused its analysis on whether the statute creates a federal right in favor of the plaintiffs, and found that Title IV-D does not give rise to enforceable private rights. 875 F.2d at 1565. The court based its holding on its conclusion that AFDC recipients were not the intended beneficiaries of Title IV-D. Reasoning that "Title IV-A provides funds from the public treasury to support children in need [while] Title IV-D seeks to recover those funds and restore the Treasury balance by enforcement of support obligations owed by the absent parents of these children", the Eleventh Circuit concluded that the congressional intent behind the Title IV-D program was "recovery of welfare payments and a parallel commitment to remove and keep families from the necessity of welfare dependence by establishing and enforcing support obligations." *Id.* Congressional intent was to confer benefits on society as a whole, through reduction of welfare outlay, "rather than specific individuals." *Id.*

The Eleventh Circuit's "intended beneficiary" analysis in *Wehunt* was rejected by the Sixth Circuit in *Carelli v. Howser*, 923 F.2d 1208 (6th Cir. 1991). While characterizing Title IV-D as "essentially a 're-capture' rather than a 'benefits' program", 923 F.2d at 1214, the Sixth Circuit nevertheless found that Title IV-D was intended both to protect needy families with children and to protect the public fisc . *Id.* at 1211.[15] The First, Eighth, and Ninth Circuits, applying the first of the three-part *Wilder*[16] test for determining the existence of "enforceable rights", have agreed that in enacting Title IV-D Congress intended to benefit needy families with children. *Albiston v. Maine Commissioner of Human Services*, 7 F.3d 258, 268 (1st Cir. 1993); *Howe v. Ellenbecker*, 8 F.3d 1258, 1262 (8th Cir. 1993); *Freestone v. Cowan*, 68 F.3d 1141, 1152-53 (9th Cir. 1995).

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[15] In *Carelli* the Sixth Circuit held that § 1983 enforcement of Title IV-D is, nevertheless, not available, being precluded by the statute's comprehensive remedial scheme. 923 F.2d at 1213. That issue has given rise to another split of authority, with the First, Eighth, and Ninth Circuits finding, contrary to the Sixth, that the administrative enforcement scheme of Title IV-D falls short of what is required to foreclose a § 1983 remedy: *Albiston v. Maine Commissioner of Human Services*, 7 F.3d 258 (1st Cir. 1993); *Howe v. Ellenbecker*, 8 F.3d 1258 (8th Cir. 1993); *Freestone v. Cowan*, 68 F.3d 1141 (9th Cir. 1995).

[16] *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 508-09 (1990) established this basic framework: whether a statute creates "enforceable rights" turns on (1) whether the provision in question was intended to benefit the putative plaintiff, (2) whether the provision creates a binding obligation on the governmental unit, and (3) whether the asserted interest is too vague and amorphous such that it is beyond the competence of the judiciary to enforce.

The Tennessee Supreme Court has placed itself with this group of cases on this issue. App. 16.

The Seventh Circuit has not yet addressed the availability of a § 1983 action to enforce Title IV-D. But in *Mason v. Bradley*, 789 F.Supp. 273 (N.D. Ill. 1992), the district court joined the Eleventh and Sixth Circuits in finding no enforceable right, although under a different rationale than that employed by either of those courts. The court found dispositive the principle established in *Pennhurst, supra* at 17, and reiterated in *Suter v. Artist M.*, ___ U.S. ___ , 112 S.Ct. 1360, 1366 (1992): If Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously. In the view of the *Mason* court, since Title IV-D conditions federal funding only on a state's "substantial compliance" with IV-D requirements (defined as provision of services in 75 percent of reviewed cases, 45 C.F.R. § 305.20), it cannot be said that Title IV-D provides "unambiguous notice" of a binding obligation to provide effective child support enforcement services to *all* IV-D applicants so as to create private enforceable rights. 789 F.Supp. 276-277.

In *King v. Bradley*, 829 F.Supp. 989 (N.D. Ill. 1993), however, the court concluded that Title IV-D does impose a binding obligation on the state – to operate a program that substantially complies with statutory and regulatory procedures. 829 F.Supp. at 993-994. Even given that "binding obligation", though, the scope of any enforceable right was viewed as limited, with no individual having an enforceable right to be among the 75 percent of cases that must be handled in conformance with required procedures. *Id.* at 994. Accordingly, in the view of the *King* court, a state is subject to suit only when it is

operating a IV-D program that is not in substantial compliance, and then any individual or class of plaintiffs that fails to receive IV-D services has the right, not to individual relief, but simply to enjoin the state to improve its level of program performance to substantial compliance. *Id.*

The circuit courts of appeals that have found an enforceable right in Title IV-D have joined in the debate about the scope of that right. The First Circuit, in *Albiston v. Maine Commissioner of Human Services, supra,* concluded that an individual AFDC recipient may bring a private action and may do so to force the state to comply with Title IV-D statutory obligations as to that individual plaintiff. The First Circuit would apparently not limit the scope of § 1983 availability to an action to force the state to conform to an overall level of "substantial compliance". The Ninth Circuit, however, has only gone so far as to allow an action to enjoin the state to achieve substantial compliance with Title IV-D requirements. *Freestone v. Cowan, supra.*

The decision of the Tennessee Supreme Court has compounded the split among the lower courts. The court rejected the Eleventh Circuit's analysis in *Wehunt* finding no enforceable right under Title IV-D, App. 9, as well as the Sixth Circuit's conclusion in *Carelli* that § 1983 actions to enforce Title IV-D are precluded by the statute's comprehensive remedial scheme. App. 16. In concluding that a plaintiff may use § 1983 to obtain relief in the form of desired IV-D services in her individual case, even if the state's Title IV-D program is operating in substantial compliance, the Tennessee Supreme Court endorsed a view of the scope of enforceable rights under Title IV-D beyond

that expressly recognized in *King v. Bradley, supra,* or permitted by the Ninth Circuit in *Freestone v. Cowan, supra.*

The conflicting treatments of the key points of enforceable rights analysis that have been adopted by the lower courts, coupled with the significant impact of these issues on Title IV-D programs nationwide, underscore the urgent need for this Court to provide definitive resolution of whether Title IV-D creates enforceable rights for which 42 U.S.C. § 1983 provides a private remedy.

II. THE ENFORCEABLE RIGHTS ANALYSIS OF THE TENNESSEE SUPREME COURT REFLECTS A DISREGARD OF THE GOVERNING PRINCIPLES EXPRESSED BY THIS COURT.

In *Pennhurst State School and Hospital v. Halderman, supra,* the Court established what is perhaps the central principle guiding the analysis of whether a statute enacted by Congress pursuant to its spending power creates enforceable rights within the meaning of 42 U.S.C. § 1983: "if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." 451 U.S. at 17. That principle was reiterated in *Suter v. Artist M., supra,* 112 S.Ct. at 1366. (The statutory provision sought to be enforced must provide "unambiguous notice" to states of any condition on which the grant of

federal funds depends.)[17] As expressed by *Pennhurst*, the relevant inquiry must focus on whether Congress intended the states to fund certain entitlements or new, substantive rights as a condition of receiving federal funds. 451 U.S. at 17-18. After examining the principles established by *Pennhurst*, the Court in *Suter* concluded that § 1983 is not available to remedy a violation of a statute enacted pursuant to Congress' spending power[18]

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[17] Congress has recently passed an amendment to Part A of Title XI of the Social Security Act. The amendment states that in all pending and future actions

> . . . brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.*, 112 S.Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in *Suter v. Artist M.* that section 471(a)(15) of the Act is not enforceable in a private right of action. [42 U.S.C. § 1320a-2].

Thus, Congress overturned only so much of *Suter* as may have departed from this Court's precedent as a basis for the proposition often attributed to that decision: the only enforceable right under a statute requiring a state plan is a right to the plan itself. Seizing upon this amendment, the Tennessee Supreme Court's treatment of *Suter* was dismissive: "[W]e will not use the *Suter* opinion in this case." App. 8, n.4.

[18] Article I, § 8, cl. 1, of the Constitution contains the spending power, which provides, "Congress shall have Power to . . . provide for the . . . general Welfare of the United States."

where the statute does not unambiguously create enforceable rights. 112 S.Ct. at 1367. Under *Pennhurst* the initial question, which is one of statutory construction, is whether Congress, in the provision at issue, intended to create enforceable rights in favor of the plaintiff. 451 U.S. at 15. Despite these pronouncements requiring a careful analysis of the statute relied on by plaintiffs as the source of the right they seek to enforce, the Tennessee Supreme Court, in determining whether Title IV-D creates enforceable rights, virtually ignored the relevant text of the statute.

As the largely exclusive basis for its implicit conclusion that Congress intended to create an enforceable entitlement to full compliance with Title IV-D in favor of each individual potential IV-D client, the court below relied, not on the language of the *statute*, but on implementing regulations. Specifically, the court viewed the standards for program operations set out in 45 C.F.R. Part 303, which are couched in mandatory terms applicable to "all cases", as creating what the court termed "direct obligations" on state IV-D agencies. App. 18, 20. Under the holding of the Tennessee Supreme Court, even if the state is operating its IV-D program in "substantial compliance" with Title IV-D's requirements – the language of 42 U.S.C. § 602(a)(27) and 603(h) – the so-called "direct obligations" created by Part 303 regulations are enforceable by all individuals not being served by that substantially complying program.

The flaws of the court's analysis are manifest. It ignores the *Pennhurst* and *Suter* decisions. Part 303 regulations do not create enforceable rights because compliance with those regulations is not an unambiguous

condition for the receipt of federal funds. Requiring compliance in "all cases" in accordance with Part 303 regulations would contradict the language of the statute, which requires only "substantial", not full, compliance as a condition of federal funding. 42 U.S.C. § 603(h)(1), § 602(a)(27). App. 66, 53. Additionally, under the court's analysis administrative regulations *alone* have created enforceable rights. That result is squarely at odds with the principle that "the rulemaking power granted to an administrative agency charged with the administration of a federal statute" is the power "to carry into effect the will of Congress as expressed by the statute", "not the power to make law." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 213-214 (1976); *see also Touche Ross & Co. v. Redington*, 442 U.S. 560, 577 n. 18 (1979) (The language of the statute, not administrative rules, must control); *Wright v. Roanoke Redevelopment and Housing Authority, supra* at 438 (O'Connor, J., dissenting) ("Such a result, where determination of § 1983 'rights' have been unleased from any connection to congressional intent, is troubling indeed.")

The statutory language of Title IV, conditioning the level of federal funding on the state's "substantial compliance" with the requirements of Title IV-D (42 U.S.C. §§ 602(a)(27), 603(h)(1)), does not unambiguously create identifiable enforceable rights within the meaning of § 1983. The only unambiguous condition on federal funding of which a state can fairly be said to have notice is that the Title IV-D program must operate in "substantial" – and, by necessary implication, not "total" – compliance. In Title IV-D Congress fell well short of providing clear and unambiguous notice to the states that, by accepting Title IV-A money, they would be obligated to fund a new

entitlement program and substantive, individual rights in the form of IV-D child support enforcement services for each and every custodial parent who requests such services.

This conclusion is supported by the unique remedial scheme applicable to Title IV-D programs. First, Congress established a three-tiered reduction in funding based on the number of consecutive findings by HHS of a state's failure substantially to comply with its Title IV-D plan. 42 U.S.C. § 603(h)(1). App. 66. Second, Congress allowed for suspension of the funding reduction, even when a state's IV-D program is failing substantially to comply, by permitting the state to submit a corrective action plan that contains steps necessary to achieve substantial compliance. 42 U.S.C. § 603(h)(2). App. 67. In other words, under certain conditions the level of federal funding is unaffected even by the state's operation of a IV-D program that is not in substantial compliance. Surely Congress would not have established such a flexible scheme, focused on encouraging states voluntarily to achieve the goal of improving the level of their IV-D program performance, if it had simply intended to impose absolute obligations on the states.[19]

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[19] The internal enforcement scheme of Title IV-D differs significantly from the audit and penalty provisions typical of other programs under the Social Security Act, in ways with which private enforcement actions would conflict. Congress expressly delegated to HHS a broad and comprehensive oversight function of monitoring a state's compliance with its IV-D plan, in accordance with a flexible standard of compliance built into the statutory scheme. The extensive oversight function of HHS expressly includes discretionary authority to suspend an

Under Title IV-D, no individual custodial parent can say that Congress gave her a right to have the state provide a child support enforcement service in her case that it is failing to provide. Even under a IV-D program operating at the required level of "substantial compliance", no particular plaintiff would be assured of being within the percentage of cases to whom such services would have to be provided. The funding condition of "substantial compliance" – requiring state child support enforcement programs to comply with IV-D requirements, but only with respect to a portion of eligible individuals – imposes no judicially enforceable obligation in any individual case. To suggest that, nevertheless, Congress intended Title IV-D to rise to the level of enforceable entitlements strains logic past the breaking point. The absence of any assured private benefit resulting from the state's conformance with the Title IV-D "substantial compliance" funding condition argues strongly against any congressional intent to confer substantive rights, privately enforceable in a § 1983 action.

The decision of the Supreme Court of Tennessee – effectively transforming Title IV-D into an entitlement program, despite the clear absence of "unambiguous notice" to the participating state of such a funding condition – starkly illustrates the result of the failure to apply

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otherwise mandatory incremental penalty during a state's corrective action period, which is also within the discretion of HHS to approve. Allowing a plaintiff to bring a § 1983 action for individual relief "would be inconsistent with Congress' carefully tailored scheme." *Smith v. Robinson*, 468 U.S. 992, 1012 (1984).

the principle of *Pennhurst* and *Suter* in guiding the analysis of whether a statute enacted by Congress pursuant to its spending power creates enforceable rights within the meaning of § 1983. The Court should grant the writ in order to hold that Title IV-D does not confer enforceable rights on every person eligible for child support enforcement services.

CONCLUSION

For the foregoing reasons, the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

PATRICIA DAVIS, ELLA LARITA LILLARD, PATRICIA NORTHCUTT, and MARIETTA TURNER, on their own behalves and on behalf of all persons similarly situated, Plaintiffs-Appellees, v. JOYCE MCCLARAN, Director, Child Support Services, Tennessee Department of Human Services, Defendant-Appellant, and VICTOR S. JOHNSON, III, District Attorney General for the 20th Judicial District, and THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, Defendants.	FOR PUBLICATION Filed: October 30, 1995 DAVIDSON CHANCERY Hon. Irvin Kilcrease, Chancellor No. 01S01-9403-CH-00026

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OPINION

COURT OF APPEALS AFFIRMED AS MODIFIED. DROWOTA, J.

This case presents the question of whether individual plaintiffs may bring an action against the Child Support Services Division of the Tennessee Department of Human Services (DHS) pursuant to 42 U.S.C. § 1983 to enforce their rights to child support services allegedly conferred by Title IV-D of the Social Security Act. 42 U.S.C. § 651 *et seq.* The Court of Appeals reversed the trial court's judgment denying the requested relief, holding instead that the plaintiffs were entitled to bring an action under § 1983 to force the State to "substantially comply" with the requirements of Title IV-D. Pursuant to the applicable regulations, a state Title IV-D agency is in "substantial compliance" if it follows specified procedures with regard to certain enumerated criteria in seventy-five (75%) of its child support cases. For the reasons that follow, we modify the Court of Appeals' holding and conclude that these and similarly situated individuals should be allowed to bring a claim under § 1983 for individual relief when the state violates its "direct obligations" under Title IV-D, even if the State is in "substantial compliance" with the requirements of the Act.

FACTS AND PROCEDURAL HISTORY

The plaintiffs in this action – Patricia Davis, Ella Larita Lillard, Patricia Northcutt and Marietta Turner – allege that the Tennessee DHS has failed to provide them

with child support services as required by Title IV-D.[1] Specifically, Davis, Lillard, and Turner allege that DHS has failed to assist them in enforcing existing child support obligations owed by the fathers of their respective children. Although it is not entirely clear from the complaint, Northcutt apparently alleges that DHS has failed to assist her in establishing a support obligation for her child. Citing an evaluation of the Title IV-D program performed by a private consulting firm, the plaintiffs allege that these failures are principally due to the fact that the Davidson County Child Support Program is grossly understaffed, as compared to other counties in the state. The plaintiffs seek injunctive relief under § 1983 for the deprivation of their alleged federal statutory rights; they also seek declaratory relief and a writ of mandamus.

After the plaintiffs filed their action, the trial court granted the defendants' motion to dismiss for failure to state a claim upon which relief could be granted. The trial court held that "the plaintiffs have no private right of action to enforce any rights allegedly arising under either Title IV-D and/or 42 U.S.C. § 1983." The trial court also concluded that "the plaintiffs have no clear, specific and

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[1] Because DHS had contracted with Victor S. Johnson, III, the District Attorney General for Davidson County, and the Metropolitan Government of Nashville and Davidson County (Metro) to provide the services required by Title IV-D, the original complaint named these parties as defendants. However, during the course of this litigation the contract expired, thus mooting the claims against Johnson and Metro. The parties entered into agreed orders dismissing Johnson and Metro.

undeniable rights which this court could enforce by a writ of mandamus or declaratory relief."

As noted above, the Court of Appeals reversed this judgment, holding that the plaintiffs could utilize § 1983 to force the state to "substantially comply" with the requirements of Title IV-D. The State then filed an application for permission to appeal pursuant to Rule 11, Tenn. R. App. P. We granted that application to consider this important issue, which has caused a split among the jurisdictions that have considered it.[2]

STATUTORY BACKGROUND

Title IV of the Social Security Act is a federal-state cooperative venture that provides assistance to needy families who have been deprived of a parent through death, desertion or disability. 42 U.S.C. § 601-687. Although participation in the direct aid portion of Title IV – Title IV-A, the Aid to Families with Dependent Children Program – is not mandatory, states choosing to participate and receive federal funds must, among other things,

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[2] A number of jurisdictions, perhaps a slight majority, have held that relief is available under § 1983. *See Albiston v. Maine Com'r of Human Services*, 7 F.3d 258 (1st Cir. 1993); *Howe v. Ellenbecker*, 8 F.3d 1258 (8th Cir. 1993); *King v. Bradley*, 829 F.Supp. 989 (N.D. Ill. 1993); *Behunin v. Jefferson County Dept. of Social Services*, 744 F.Supp. 255 (D. Colo. 1990). Others, however, have denied relief on various grounds. *See Wehunt v. Ledbetter*, 875 F.2d 1558 (11th Cir. 1989); *Carelli v. Howser*, 923 F.2d 1208 (6th Cir. 1991). For a good discussion of the issue, see Ashish Prasad, "Rights Without Remedies: Section 1983 Enforcement of Title IV-D of the Social Security Act," 60 *University of Chicago Law Review*, 197 (1993).

"provide that the State has in effect a plan approved under part D of this subchapter and operates a child support program in substantial compliance with such plan." 42 U.S.C. § 602(a)(27). Title IV-D provides a wide variety of child support services to needy families, as 42 U.S.C. § 651, its authorization of appropriations section, indicates:

> For the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

As noted above, a participating state is required to submit a plan to the Secretary of Health and Human Services (HHS) and have that plan approved by the Secretary. The broad requirements for the plan are outlined in 42 U.S.C. § 654, and are further defined in the supporting regulations, found at 45 C.F.R. Part 302. The plan must, at a minimum, provide that it will be in effect in all political subdivisions of the state and that it will be administered by a single state agency (the Title IV-D state agency). 42 U.S.C. § 654(1), (3). The plan must also provide that child support services will be made available to any child for whom an application for assistance is filed.

42 U.S.C. 654(6). The agency must be adequately staffed to ensure the availability of services. 42 U.S.C. § 652(a)(2).

It is not sufficient, however, for the state merely to *have* an approved plan; it must also *operate* the program in compliance with the requirements of Title IV-D. The Secretary is required to conduct audits of the state Title IV-D programs at least once every three years in order to ensure this compliance. 42 U.S.C. § 652(a)(4). If the state is found to be out of compliance, the Secretary is authorized to withhold a certain percentage of federal funds unless the state submits a corrective action plan, in which case the reduction of funding may be suspended. 42 U.S.C. § 603(h).

In order to avoid the reduction in funding, the state must be in "substantial compliance with the requirements of title IV-D." 42 U.S.C. § 603(h), 604 (a)(2). This term is defined in 45 C.F.R. 305.20:

> In order to have an effective program in substantial compliance with the requirements of title IV-D of the Act, a state must meet the IV-D State plan requirements contained in Part 302 of this chapter as measured as follows: . . . For the fiscal year 1988 and future audit periods: (1) The criteria prescribed in paragraphs (a)(1), (b)(1), and (c)(1) must be met. (2) The procedures required by the criteria prescribed in paragraphs (a)(2), (b)(2), and (c)(2) of this section must be used in 75 percent of the cases reviewed for each criterion.

After defining "substantial compliance," Part 305 goes on to list certain general procedures that the state agency must follow for each criterion. The criteria at issue in this

case, "[Establishment of] Support obligations" and "Enforcement of support obligation," are contained under paragraph (a)(2).

There is one final set of regulations applicable to state title IV-D programs. Part 303, which is entitled "Standards for Program Operations," prescribes "(a): [t]he minimum organizational and staffing requirements the state IV-D agency must meet in carrying out the IV-D program, and (b): [t]he standards for program operation which the IV-D agency must meet." Part 303 then sets forth detailed guidelines that the state IV-D agency "must" meet "for all cases" for several criteria, including: "establishment of cases and maintenance of case records," 45 C.F.R. § 303.2; "location of absent parents," 45 C.F.R. § 303.3; "establishment of support obligations," 45 C.F.R. § 303.4; "establishment of paternity," 45 C.F.R. § 303.5; and "enforcement of support obligations," 45 C.F.R. § 303.6. These guidelines, which are phrased in mandatory language and apply to all cases, are often much more specific and stringent than the general "procedures" applicable to the same criteria in Part 305.

THE AVAILABILITY OF SECTION 1983

It is now well-settled that § 1983[3] is available to redress violations of federal law by persons acting under

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[3] Section 1983 provides, in pertinent part:
"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or the district of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the

color of state law. *Maine v. Thiboutot*, 448 U.S. 1, 100 S.Ct. 2502, 65 L.Ed.2d 555 (1980). This availability is, however, subject to two important exceptions: (1) where the federal statute in question does not create an enforceable right, *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981), *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 107 S.Ct. 766, 93 L.Ed.2d 781 (1987); or (2) when Congress has foreclosed such enforcement of the statute in the statute itself. *Middlesex County Sewerage Authority v. National Sea Clammers Ass'n*, 453 U.S. 1, 101 S.Ct. 2615, 69 L.Ed.2d 435 (1981); *Smith v. Robinson*, 468 U.S. 992, 104 S.Ct. 3457, 82 L.Ed.2d 746 (1984).

A. THE ENFORCEABLE RIGHT EXCEPTION

In *Wilder v. Virginia Hospital Ass'n*, 496 U.S. 498, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990), the United States Supreme Court synthesized its prior cases and formulated a three-part test for determining when a federal statute creates a right enforceable by § 1983.[4] The *Wilder* court stated that

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> deprivation of any rights privileges, or immunities, secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress."

[4] The "enforceable right" exception has been dealt with by the Supreme Court since *Wilder* in *Suter v. Artist M.*, ___ U.S. ___, 112 S.Ct. 1360, 118 L.Ed.2d 1 (1992), a case in which the Court arguably reduced the scope of an enforceable right to a substantial degree. However, Congress recently has expressly disavowed the restrictive analysis employed in *Suter*. *See* Public L. 103-382, 108 Stat. 3518, 4057-58, reprinted in *December 1994 U.S. Cong. and Admin. News*. Therefore, we will not use the *Suter* opinion in this case.

> Such an inquiry turns on [1] whether the provision in question was intended to benefit the putative plaintiff. [2] If so, the provision creates an enforceable right unless it reflects merely a 'congressional preference' for a certain kind of conduct rather than a binding obligation on the government unit, unless [3] the interest the plaintiff asserts is too 'vague and amorphous' such that it is 'beyond the competence of the judiciary to enforce.'

Wilder, 498 U.S. at 509, 110 S.Ct. at 2517 (citations omitted).

We have little difficulty concluding that plaintiffs have enforceable rights to Title IV-D benefits under the *Wilder* test.[5] First, while the State cites *Wehunt v. Ledbetter*, 875 F.2d 1558 (11th Cir. 1989) for the proposition that Title IV-D was enacted for the exclusive purpose of reducing the welfare rolls and benefitting the public treasury, and that custodial parents and children are thus not the intended beneficiaries of the legislation, we believe, as do the great majority of other courts that have considered this issue,[6] that the plain language of the Act and its legislative history overwhelmingly prove otherwise. Initially, although parents receiving AFDC benefits are required to assign any child support benefits to which they are entitled to the state, 42 U.S.C. § 602(a)(26), those parents are nevertheless entitled to receive the first fifty ($50) dollars of any monthly support payments collected

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[5] The precise scope of these rights is another question. See THE SCOPE OF § 1983 AVAILABILITY, *infra*.

[6] The courts that have rejected *Wehunt* include *Carelli*, *Albiston*, *Howe*, and *King*.

by the state, with no accompanying loss in AFDC eligibility. Also, parents who do not receive AFDC benefits are eligible to receive Title IV-D benefits, and are entitled to the full amount of child support collected by the state. 42 U.S.C. § 657(b)(4). These provisions suggest that Title IV-D was intended, at least in part, to directly benefit custodial parents and their children. This conclusion is buttressed by the language of § 651, quoted above, and by the legislative history of the Act.[7] Therefore, we conclude that custodial parents and their children are beneficiaries of the Act, though perhaps not the sole beneficiaries.

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[7] Indeed, the following legislative history quoted by the *Wehunt* court just as readily supports our conclusion:

> The problem of welfare in the United States is to a considerable extent, a problem of the non-support of children by their absent parents. Of the 11 million recipients who are now receiving Aid to Families with Dependent Children (AFDC), 4 out of every five are on the rolls because they have been deprived of the support of a parent who has absented himself from the home.
>
> *The Committee believes that all children have the right to receive support from their fathers. The committee bill . . . is designed to help children attain this right, including the right to have their fathers identified so that support can be obtained. The immediate result will be a lower welfare cost to the taxpayer but, more importantly, as an effective support collection system is established fathers will be deterred from deserting their families to welfare and children will be spared the effects of family breakup.*

Wehunt, 875 F.2d at 1565, quoting S.Rep. No. 93-1356, 93rd Cong., 2d Sess., reprinted in *1974 U.S. Code Cong. and Admin. News* 8133, 8145-46 (emphasis added).

The second prong of the *Wilder* enforceable rights test – the "binding obligation" prong – likewise appears relatively straightforward. The Supreme Court has stated that a federal statute will be considered a "binding obligation" of a state, rather than a mere "congressional preference" for action, if the state's receipt of federal funds is unambiguously conditioned upon its compliance with the statute. *Pennhurst*, 451 U.S. at 19, 101 S.Ct. at 1541. Here, the state is clearly required to "substantially comply with the requirements of Title IV-D"; and its failure to do so will subject it to a reduction of federal funding. Although the state may retain discretion in some areas of its program not covered by the regulations, we believe that this is a sufficiently binding obligation for purposes of the *Wilder* test.

Lastly, the *Wilder* test requires that the federal rights asserted by the plaintiff be sufficiently determinate so that the judiciary may competently enforce them. In prior Supreme Court cases, such as *Wilder* and *Wright*, this determination has turned upon whether the state's discretion in conferring the right was adequately channeled and guided by the statute or its implementing regulations so as to provide some standard by which to gauge the state's performance. Here, the regulations in Part 305, and even more so in part 303, which is more specific and stringent still, substantially channel the state's discretion. Therefore, since the standards for gauging the state's performance are ascertainable, the plaintiffs' asserted rights are sufficiently determinate. This conclusion is supported by the fact that the Title IV-D regulations are much more detailed than those at issue in *Wilder* and *Wright*.

B. THE FORECLOSURE EXCEPTION

The second major exception to the availability of § 1983 to enforce a federal right is when Congress has foreclosed the use of § 1983 in the statute itself. This foreclosure may occur in two ways: first, when Congress expressly precludes the use of § 1983 in the statute, *Wright*, 479 U.S. at 423, 107 S.Ct. at ___; or second, when the statute creates a remedial scheme that is "sufficiently comprehensive . . . to demonstrate congressional intent to preclude the remedy of suits under § 1983. *Sea Clammers Ass'n*, 453 U.S. at 20, 101 S.Ct. at ___.

The State concedes that Title IV-D does not expressly preclude resort to § 1983. However, it argues that the Secretary's authority to audit the state Title IV-D programs, coupled with its ability to withhold federal funding if the programs are discovered to be out of compliance, demonstrates that Congress intended that the Secretary, not the state or federal judiciaries, possess remedial authority over Title IV-D. The State relies heavily upon *Carelli v. Howser*, 923 F.2d 1208 (6th Cir. 1991) to support this argument.

In *Carelli* the Sixth Circuit considered a § 1983 challenge to Ohio's Title IV-D program brought by custodial mothers. In its analysis of the "implicit foreclosure" issue, the Court first described in detail the Secretary's audit authority over the state programs. It then emphasized that the State of Ohio had been audited and found to be out of compliance; that it had submitted a corrective action plan; that a follow-up audit had revealed that the program was still not in compliance and that a reduction in funding had been assessed by the Secretary; and that a

second corrective action plan was then underway. The Court then concluded that the Secretary's audit authority was sufficiently comprehensive to preclude reliance upon § 1983. It explained its conclusion as follows:

> Reduced to its simplest terms, plaintiffs seek a 'hurry-up' order from the federal court. Plaintiffs make no attack on the applicable regulations, and the Secretary is not even a party to this litigation. They allege no acts of non-compliance beyond those already unearthed in the Secretary's audit . . . Plaintiffs do not allege that Ohio cannot or will not get its program in compliance . . .
>
> Since the plaintiffs seek no monetary relief, there would be no particularized individual relief forthcoming if this lawsuit were to go forward. What we envision happening would be an order coming from the court directing the State of Ohio to increase staff size, do a better job of establishing priorities, and setting time limits for performing required tasks as well as responding to calls for service. In short, the court's order would address all the shortcomings the secretary has already ordered corrected.
>
> We concede that, for the short term, a court order might be more effective. After all, the Secretary just imposes a monetary penalty on the state treasury; the court could send recalcitrant state officials to jail! We are not convinced, however, that Congress intended the federal judiciary to occupy the same ground at the same time and in the same manner as the secretary, notwithstanding that the Secretary's corrective action might take longer. We are not

> suggesting that time is irrelevant. We note, however, that none of these plaintiffs is limited to waiting for the Secretary to act. This is not like a case where the government promises a monthly stipend and then does not deliver. In such a case, an intended beneficiary either gets his stipend from the government as promised or not at all. Here, each member of the class has other legal remedies for securing enforcement of court orders, establishing parenthood, or obtaining whatever relief is sought. Although Title IV-D was adopted, at lest [sic] in part, to make sure that responsible parties were held to their obligations, there was no intent to supplant or preempt any private remedy available that would accomplish the same end.

Carelli, 923 F.2d at 1216.

We begin our analysis with a recognition of the historic importance of § 1983 as a means of redressing violations of federal rights by state actors, and thus we, like the Supreme Court, "do not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy." *Smith*, 468 U.S. at 1012, 104 S.Ct. at 3468. First, we acknowledge that the concerns voiced by the *Carelli* court have some validity in a practical sense: confusion and uncertainty could result if the Secretary was attempting to remedy the Title IV-D program at the same time as the state or federal judiciary. Of course, these concerns do not strictly apply to the matter before us, as the record does not reveal that the Secretary has taken any action to remedy the staffing and performance problems that allegedly plague the Davidson County Child Support Office. Therefore, this case does not present the sort of

immediate practical problems as did *Carelli*, and that case's persuasiveness is thereby diminished.

However, we also disagree with the *Carelli* court for a more fundamental reason. The Supreme Court has only twice held that Congress has implicitly precluded reliance on § 1983 by enacting comprehensive remedial schemes. In *Sea Clammers*, the Court held that the remedial scheme included in the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, evidenced a congressional intent to foreclose resort to § 1983. This remedial scheme granted the Environmental Protection Agency enforcement power via noncompliance orders, civil suits and criminal penalties, and it included two citizen suits provisions. Similarly, in *Smith*, the Supreme Court held that the detailed administrative scheme in the Education of the Handicapped Act, 20 U.S.C. § 1400 et seq., foreclosed reliance on § 1983 because it included local administrative review that culminated in a right to judicial review.

The common thread of *Sea Clammers* and *Smith* is that both Acts contained provisions for private enforcement of statutorily conferred rights. In stark contrast, Title IV-D provides no such provision for private enforcement by the beneficiaries of the legislation. Indeed, the Supreme Court's rejection in *Wilder* of a similar argument proffered by the State of Virginia with regard to the Medicaid Act is equally applicable here:

> The Medicaid Act contains no comparable provision for private judicial or administrative enforcement. Instead, the Act authorizes the Secretary to withhold approval of plans, or to curtail federal funds to states whose plans are

> not in compliance with the Act . . . By regulation, the states are required to adopt an appeals procedure by which the individual providers may obtain administrative review of reimbursement rates. . . .
>
> This administrative scheme cannot be considered sufficiently comprehensive to demonstrate a congressional intent to withdraw the private remedy of § 1983.

Wilder, 496 U.S. at 521-22, 110 S.Ct. at 2524.

Because the Supreme Court decisions in this area have required some type of private remedy in order to manifest congressional intent to preclude reliance on § 1983, and because Title IV-D contains no such provision, we conclude that the Secretary's audit authority does not implicitly foreclose resort to § 1983.

SCOPE OF SECTION 1983 AVAILABILITY

Because we have determined that Title IV-D creates enforceable rights in favor of custodial mothers and their children and that Congress did not intend to foreclose resort to § 1983, we therefore hold that plaintiffs may utilize § 1983 to redress violations of their Title IV-D rights by state actors. This general holding, however, leaves a very important issue unresolved: is the plaintiffs use of § 1983 limited to enjoining the state to "substantially comply" with the requirements of Title IV-D; or may the plaintiffs use § 1983 to obtain relief in their individual cases, regardless of whether the state is substantially complying? More specifically, is the plaintiff limited to suing the state for the purpose of forcing it to bring its program into substantial compliance, as defined

in part 305 of the regulations, which would not necessarily guarantee relief in an individual case; or does the plaintiff have a right, enforceable by § 1983, to receive child support services according to the specific, mandatory guidelines in the Act, such as those enunciated in part 303?

As with the general § 1983 issue, this specific question has generated a split among the jurisdictions that have considered it. In *Albiston v. Maine Com'r of Human Services*, 7 F.3d 258 (1st Cir. 1993), the First Circuit Court of Appeals considered a § 1983 action brought to compel the State of Maine to promptly distribute child support payments to families in accordance with the mandatory language of U.S.C. § 652(i) and its supporting regulations. In that case, Maine argued that "the statutory requirement of 'substantial' rather than 'total' compliance renders the state's . . . obligation under the plan ambiguous in individual cases, and therefore unenforceable in a private action under 42 U.S.C. § 1983." The Court rejected this argument reasoning that:

> More generally, however, the 'substantial compliance' required to avoid administrative penalties under [the statutory provisions and regulations] is independent of, and narrower than, the State's *direct obligation* to AFDC recipients. As the Ninth Circuit has stated, in an analogous context, '[t]he funding standard [of 'substantial compliance'] is not . . . the measure of what the regulations require; it is intended to measure how great a failure to meet those requirements should cause funds to be cut off.'

Albiston, 7 F.3d at 266 (emphasis added).

Because the mandatory requirements of Part 303 clearly constitute a "direct obligation" on state Title IV-D agencies in the same way as § 652(i) and its supporting regulations, the *Albiston* court would allow plaintiffs to bring an action for individual relief in accordance with these regulations regardless of whether the State was substantially complying.

The opposite view on this issue has been taken by the District Court for the Northern District of Illinois in *King v. Bradley*, 829 F.2d 989 (N.D. Ill. 1993). In rejecting the plaintiffs' argument that they had a right to individual relief, the *King* court stated:

> Plaintiffs claim that they have an enforceable right to more than substantial, or 75%, compliance. They argue that the Part 305 regulations, which set out the 75% compliance requirement, govern only the audit process and do not define the level of compliance on which the federal funding is conditioned. They contend that instead, the part 303 regulations governing 'program operation' define the necessary level of compliance. Part 303 requires compliance with federal procedures 'in all cases.' This argument ignores the *Suter, Wilder* and *Pennhurst* decisions. Part 303 regulations do not create an enforceable right because compliance with Part 303 regulations is not a condition for receipt of federal funds. Furthermore, requiring compliance 'in all cases' pursuant to the Part 303 regulations would contradict the statutory language which requires only 'substantial compliance,' not strict compliance.

King, 829 F.2d at 994.

As previously noted, the Court of Appeals in this case effectively adopted the *King* rationale, holding that the plaintiffs could bring an action to force the state to substantially comply with the Part 305 regulations, but that the plaintiffs were not guaranteed to be within the class to which relief was granted. We conclude, however, that *King* is flawed on a number of grounds. First, *King* completely bypasses the question of the purpose to be served by Part 303 regulations if there is no mechanism whatsoever for enforcing them. These regulations are very specific and phrased in mandatory terms; certainly they are far stronger than the open-ended "congressional preference" dealt with in *Pennhurst*. We find it inconceivable that these detailed regulations, which have the force of law, were passed by the Secretary as simply a non-binding "suggestion" to state Title IV-D agencies that they engage in certain operative practices. But under the *King* rationale, these regulations effectively become a dead letter, a result specifically condemned by the *Wilder* court when it stated: "[w]e reject that argument because it would render the statutory requirements of findings and assurances, and thus the entire reimbursement provision, essentially meaningless." *Wilder*, 496 U.S. at 514, 110 S.Ct. at 2519-2520.

There are other major problems with the *King* rationale. First, that decision totally ignores the fact that the compliance of state programs is judged on a statewide, not a county-wide, basis. This is important, because the residents of a county with particularly acute problems in its child support program, as Davidson County is alleged to have, would receive no relief if the State could prove that its overall statewide compliance rate was 75%.

Finally, if we were to adopt the *King* rationale, a plaintiff could potentially bring an action to enforce substantial compliance, achieve a positive result at trial and on appeal, and still not be guaranteed to be among the class to which relief was granted. Thus, the very instigator of the action could conceivably be denied any relief. We cannot countenance such a perverse possibility, and therefore decline to adopt the *King* rationale.

To summarize, we hold that a plaintiff may bring an action pursuant to § 1983 to enforce the state's "direct obligations" to him or her under Title IV-D; and that this right is not dependent upon whether the State is in "substantial compliance" with the requirements of Title IV-D for purposes of the Secretary's audit.[8] The judgment of the Court of Appeals is therefore affirmed only insofar as it is consistent with this holding.

/s/ Frank F. Drowota III
FRANK F. DROWOTA III
JUSTICE

Concur:

Anderson, C.J.
Reid, Birch, JJ.
O'Brien, Sp. J. – dissenting – see separate Dissent

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[8] Although the plaintiffs also request declaratory relief and a writ of mandamus, we agree with the Court of Appeals that § 1983 is an adequate remedy, thus obviating the need for a writ of mandamus, an extraordinary remedy; and that § 1983 provides a better and more efficient remedy than a declaratory judgment.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

PATRICIA DAVIS, ELLA LARITA LILLARD, PATRICIA NORTHCUTT and MARIETTA TURNER, on their behalves and on behalf of all those similarly situated,	)	DAVIDSON CHANCERY
Plaintiffs-Appellees,	)	Hon. Irvin Kilcrease, Chancellor
v.	)	
JOYCE MCCLARAN, Director, Child Support Services, Tennessee Department of Human Services,	)	
Defendant-Appellant,	)	
and	)	No. 01S01-9403-CH-00026
VICTOR S. JOHNSON, III, District Attorney General for the 20th Judicial District, and THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,	)	
Defendants.	)	

For Plaintiffs-Appellees:

David A. Ettinger
Russell J. Overby
Legal Services of
Middle Tennessee, Inc.
Nashville, Tennessee

For Defendant:

Charles Burson
Attorney General
and Reporter

Michelle L. Lehmann
Assistant Attorney General
Nashville, Tennessee

DISSENTING OPINION

O'BRIEN, SP. J.

I dissent. Primarily, because the issues involved in this case have become moot. The suit was initiated by the plaintiff in the Chancery Court for Davidson County against Joyce McClaran, Director, Child Support Services, Tennessee Department of Human Services; and Victor S. Johnson, III, District Attorney General for the 20th Judicial District, and The Metropolitan Government of Nashville and Davidson County, seeking a declaratory judgment and injunctive relief to enforce plaintiffs rights under Title IV-D of the Social Security Act, 42 U.S.C. § 651 *et seq.*, and to assist in collecting child support.

In due course the Chancellor entered an order setting forth in pertinent part that the plaintiffs had no private right of action to enforce any rights allegedly arising under either Title IV-D and/or 42 U.S.C. § 1983. He further held that the plaintiffs had no clear, specific and undeniable rights which the court could enforce by writ of mandamus or declaratory relief. The complaint was dismissed.

Appeal was taken to the Court of Appeals. During the pendency of the appeal the contract expired between the State of Tennessee, Department of Human Services and the Metropolitan Government of Nashville and Davidson County and the District Attorney General for the Twentieth Judicial District. The parties entered into agreed orders dismissing as moot the claims against Metropolitan Government of Nashville and the District Attorney General. The Director of Child Support Services filed a motion for dismissal on similar grounds.

Subsequently, the Court of Appeals entered an order finding that the plaintiffs had alleged a right arising out

of Title IV-D and 42 U.S.C. § 1983 and that this right was not dependent upon the expired contract. They denied the motion to dismiss the appeal. The Court of Appeal's order held in pertinent part:

> Any plaintiff or class of plaintiffs that fails to receive services in compliance with federal regulations when the state is running a Title IV-D program which does not substantially comply with federal procedure does have the right to sue and enjoin the state to improve its level of performance until it is in substantial compliance.

The Court of Appeals concluded that the remedial measures prescribed under Title IV-D were insufficient evidence of congressional intent to foreclose private enforcement of the right under 42 U.S.C. § 1983.

An application of the Director of Child Support Services for the State of Tennessee for permission to appeal to this Court was granted. This Court has now affirmed the position of the Court of Appeals in part, summarizing their judgment to hold that a plaintiff may bring an action pursuant to Section 1983 to enforce the state's "direct obligation" to him or her under Title IV-D and this right is not dependent upon whether the state is in "substantial compliance" with the requirements of Title IV-D for the purposes of the secretary's audit.

Metropolitan Government of Nashville and Davidson County as well as the District Attorney General for the Twentieth Judicial District have been dismissed from the case by mutual agreement. The Director of Child Support Services, Tennessee Department of Human Services has contracted with Maximus, Inc., effective 1 July 1993, to

provide child support enforcement services for the citizens of Davidson County, pursuant to a five (5) year contract with the state. The staffing of the child support enforcement program of Davidson County has been increased over levels prevailing in November 1992, at the time the complaint in this case was filed. Insofar as this record is concerned there is no "direct obligation" to be enforced pursuant to Section 1983. The issue is moot.

With perhaps greater pertinence, the majority have preempted federal jurisdiction in this matter based on the assumption that a slight majority of cases from other jurisdictions have held that relief is available under § 1983. The cases cited in the majority Opinion are so diverse, insofar as subject matter is concerned, as to make them totally devoid of any precedential value. For example, *Howe v. Ellenbecker*, 8 F.3d 1258 (8th Cir. 1993), dealt with child support enforcement under Title IV-D of the Social Security Act in which officials of the South Dakota Office of Child Enforcement refused to enforce state court orders for child support at an Indian reservation because of jurisdictional barriers. *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 110 S.Ct. 2510, 110 L.Ed.2d, 455 (1990) involved the standards for reimbursement of nursing and intermediate care facilities. The Court held in substance that Congress did not foreclose enforcement of the Medicaid Act under § 1983 because the Act did not expressly preclude resort to the statute nor did it create a remedial scheme that was sufficiently comprehensive to demonstrate congressional intent to preclude § 1983 actions.

The child support provisions of Title IV-D of the Social Security Act as well as the AFDC Program [Title

IV-A] of the Act have been amended frequently and profusely. In order to reach a valid conclusion on the questions under consideration in this case, issue specific cases must be consulted. The majority opinion holds that the plaintiffs' [sic] have enforceable rights to Title IV-D benefits under the *Wilder* test. The Opinion goes on to discuss two cases which deal directly with the problem at hand, *Wehunt v. Ledbetter,* 875 F.2d, 1558, (11th Cir. 1989) and *Carelli v. Howser,* 923 F.2d, 1208, (6th Cir. 1991), suggesting Carelli is among the cases which have rejected *Wehunt.* The basis for that suggestion is invalid. In *Carelli,* after a thorough examination of Title IV-A and IV-D of the Social Security Act dealing with aid to families with dependent children, and a plan for child support enforcement in compliance with Title IV-D, the court held that the plaintiffs failed to state a cause of action under 1983 in a suit to enforce provisions of the Social Security Act requiring states to adopt plans for child support enforcement in order to maintain eligibility for receipt of federal aid with dependent children funds where they sought no monetary relief but only a "hurry up" order from federal court and, the mere fact that a given custodial parent's child support payments are delinquent does not necessarily mean that the state is derelict in its obligations under provisions of the Social Security Act requiring states to adopt plans for child support enforcement. The only mention of *Wehunt* in *Carelli* was to suggest that the *Wehunt* judgment was not broad enough.

> We disagree, at least in part, with the conclusion reached in *Wehunt*. The Court in *Wehunt* as do the parties here, seem to foreclose the possibility that the statute [Title IV-D] could have more than one class of beneficiaries. We see no reason

> to conclude that the statute must be read to protect needy families with children to the exclusion of protecting the public fisc or vice versa. It seems eminently reasonable that Congress intended both purposes to be served. Indeed, needy families have as much interest in the protection of the public fisc as anyone else.

In *Wehunt*, after an extensive and thoughtful analysis, the court specifically held, "Title IV-D does not create any enforceable right: it was not enacted for the "especial benefit" of AFDC families. A Title IV-D program operates under a separate legislative and regulatory framework than that of a Title IV-A program. Title IV-A provides funds from the public treasure (sic) to children in need. Title IV-D seeks to recover those funds and restore the Treasury balance by enforcement of support obligations owed by the absent parents of these children. The driving force behind the program is recovery of welfare payments and a parallel commitment to remove and keep families from the necessity of welfare dependence by establishing and enforcing support obligations. The legislative history indicates that in enacting Title IV-D Congress was primarily concerned with collecting child support in order to reduce the welfare rolls . . . Title IV-D is also not a legal assistance program. AFDC recipients do not apply for nor request support enforcement services. They assign their child support rights to the state and are required to cooperate (unless good cause for refusing to do so is determined to exist) in whatever legal action the state undertakes. By assigning their child support rights in return for the AFDC aid, they give the states the opportunity to recoup the financial drain imposed by the welfare system on the state and federal treasuries. As was its

intent, as evidenced by the language of the statue and the legislative history, diminishing the welfare outlay benefits society as a whole. Consistent with that intent, we cannot hold that Title IV-D creates enforceable rights under *Pennhurst*.["]

The opinion in *Wehunt* has foreclosed the issue definitively. The United States Supreme Court has denied certiorari. 449 U.S. 1027 110 Supreme Ct. 1972, 108 L.Ed. 2d, 609 (1990). The majority has fallen into error.

/s/ O'Brien, J.
CHARLES H. O'BRIEN, Sp. J.

42 U.S.C.

CHAPTER 7

SUBCHAPTER IV – GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD – WELFARE SERVICES

PART A – AID TO FAMILIES WITH DEPENDENT CHILDREN

§ 601. Authorization of appropriations

For the purpose of encouraging the care of Dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary; records and reports; treatment of earned income advances

(a) Contents

A State plan for aid and services to needy families with children must –

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness;

(5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) except as may be otherwise provided in paragraph (8) or (31) and section 615 of this title, provide that the State agency –

(A) shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid;

(B) shall determine ineligible for aid any family the combined value of whose resources (reduced by any obligations or debts with respect to such resources) exceeds $1,000 or such lower amount as the State may determine, but not including as a resource for purposes of this subparagraph (i) a home owned and occupied by such child, relative, or other individual and so much of the family member's ownership interest in one automobile as does not exceed such amount as the Secretary may prescribe, (ii) under regulations prescribed by the Secretary, burial plots (one for each such child, relative, and other individual), and funeral agreements (iii) for such period or periods of time as the Secretary may prescribe, real property which the family is making a good-faith effort to dispose of, but any aid payable to the family for any such period shall be conditioned upon such disposal, and any payments of such aid for that period shall (at the time of the disposal) be considered overpayments to the extent that they would not have been made had the disposal occurred at the beginning of the period for which the payments of such aid were made, or (iv) for the month of receipt and the following month, any refund of Federal income taxes made to such family by reason of section 32 of Title 26 (relating to earned income credit), and any payment made to such

family by an employer under section 3507 of Title 26 (relating to advance payment of earned income credit); and

(C) may, in the case of a family claiming or receiving aid under this part for any month, take into consideration as income (to the extent the State determines appropriate, as specified in such plan, and notwithstanding any other provision of law) --

(i) an amount not to exceed the value of the family's monthly allotment of food stamp coupons, to the extent such value duplicates the amount for food included in the maximum amount that would be payable under the State plan to a family of the same composition with no other income; and

(ii) an amount not to exceed the value of any rent or housing subsidy provided to such family, to the extent such value duplicates the amount for housing included in the maximum amount that would be payable under the State plan to a family of the same composition with no other income;

(8)(A) provide that, with respect to any month, in making the determination under paragraph (7), the State agency –

(i) shall disregard all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or a part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment;

(ii) shall disregard from the earned income of any child or relative applying for or receiving aid to families with dependent children, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, the first $90 of the total of such earned income for such month;

(iii) after applying the other clauses of this subparagraph, shall disregard from the earned income of any child, relative, or other individual specified in clause (ii), an amount equal to expenditures for care in such month for a dependent child, or an incapacitated individual living in the same home as the dependent child, receiving aid to families with dependent children and requiring such care for such month, to the extent that such amount (for each such dependent child or incapacitated individual) does not exceed $175 (or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in full-time employment or not employed throughout the month), or, in the case such child is under age 2, $200;

(iv) shall disregard from the earned income of any child or relative receiving aid to families with dependent children, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, an amount equal to (I) the first $30 of the total of such earned income not disregarded under any other clause of this subparagraph plus (II) one-third of the remainder thereof;

(v) may disregard the income of any dependent child applying for or receiving aid to

families with dependent children which is derived from a program carried out under the Job Training Partnership Act (as originally enacted) [29 U.S.C.A. § 1501 et seq.], but only in such amounts, and for such period of time (not to exceed six months with respect to earned income) as the Secretary may provide in regulations;

(vi) shall disregard the first $50 of any child support payments for such month received in that month, and the first $50 of child support payments for each prior month received in that month if such payments were made by the absent parent in the month when due, with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under section 657(b) of this title);

(vii) may disregard all or any part of the earned income of a dependent child who is a full-time student and who is applying for aid to families with dependent children, but only if the earned income of such child is excluded for such month in determining the family's total income under paragraph (18); and

(viii) shall disregard any refund of Federal income taxes made to a family receiving aid to families with dependent children by reason of section 32 of Title 26 (relating to earned income tax credit) and any payment made to such a family by an employer under section 3507 of Title 26 (relating to advance payment of earned income credit); and

(B) provide that (with respect to any month) the State agency –

(i) shall not disregard, under clause (ii), (iii), or (iv) of subparagraph (A), any earned income of any one of the persons specified in subparagraph (A)(ii) if such person –

(I) terminated his employment or reduced his earned income without good cause within such period (of not less than thirty days) preceding such month as may be prescribed by the Secretary;

(II) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by the employer, to be a bona fide offer of employment; or

(III) failed without good cause to make a timely report (as prescribed by the State plan pursuant to paragraph (14)) to the State agency of earned income received in such month; and

(ii)(I) shall not disregard –

(a) under subclause (II) of subparagraph (A)(iv), in a case where such subclause has already been applied to the income of the persons involved for four consecutive months while they were receiving aid under the plan, or

(b) under subclause (I) of subparagraph (A)(iv), in a case where such subclause has already been applied to the income of

the persons involved for twelve consecutive months while they were receiving aid under the plan,

any earned income of any of the persons specified in subparagraph (A)(ii), if, with respect to such month, the income of the persons so specified was in excess of their need, as determined by the State agency pursuant to paragraph (7) (without regard to subparagraph (A)(iv) of this paragraph), unless the persons received aid under the plan in one or more of the four months preceding such month; and

(II) in the case of the earned income of a person with respect to whom subparagraph (A)(iv) has been applied for four consecutive months, shall not apply the provisions of subclause (II) of such subparagraph to any month after such month, or apply the provisions of subclause (I) of such subparagraph to any month after the eighth month following such month, for so long as he continues to receive aid under the plan, and shall not apply the provisions of either such subclause to any month thereafter until the expiration of an additional period of twelve consecutive months during which he is not a recipient of such aid; and

(C) provide that in implementing this paragraph the term "earned income" shall mean gross earned income, prior to any deductions for taxes or for any other purposes;

(9) provide safeguards which restrict the use or disclosure of information concerning applicants or recipients to purposes directly connected with (A) the administration of the plan of the State approved under this part (including activities under part F of this subchapter), the plan or program of the State

under part B, D, or E of this subchapter or under subchapter I, X, XIV, XVI, XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (16) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an entity referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; but such safeguards shall not prevent the State agency or the local agency responsible for the administration of the State plan in the locality (whether or not the State has enacted legislation allowing public access to Federal welfare records) from furnishing a State or local law enforcement officer, upon his request, with the current address of any recipient if the officer furnishes the agency with such recipient's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive felon, that the location or apprehension of such felon is within the officer's official duties, and that the request is made in the proper exercise of those duties;

(10)(A) provide that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall, subject to paragraphs (25) and (26), be furnished with reasonable promptness to all eligible individuals; and

(B) provide that an application for aid under the plan will be effective no earlier than the date such application is filed with the State agency or local agency responsible for the administration of the State plan, and the amount payable for the month in which the application becomes effective, if such application becomes effective after the first day of such month, shall bear the same ratio to the amount which would be payable if the application had been effective on the first day of such month as the number of days in the month including and following the effective date of the application bears to the total number of days in such month;

(11) provide for prompt notice (including the transmittal of all relevant information) to the State child support collection agency (established pursuant to part D of this subchapter) of the furnishing of aid to families with dependent children with respect to a child who has been deserted or abandoned by a parent (including a child born out of wedlock without regard to whether the paternity of such child has been established);

(12) provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title;

(13) provide, at the option of the State and with respect to such category or categories as the State may select and identify in the State plan, that –

(A) except as provided in subparagraph (B), the State agency (i) will determine a family's eligibility for aid for a month on the basis of the family's income, composition, resources, and other similar relevant circumstances during such month, and (ii) will determine the amount of such aid on the basis of the income and other relevant circumstances in the first or, at the option of the State (but only where the Secretary determines it to be appropriate), second month preceding such month; and

(B) in the case of the first month, or at the option of the State (but only where the Secretary determines it to be appropriate), the first and second months, in a period of consecutive months for which aid is payable, the State agency will determine the amount of aid on the basis of the family's income and other relevant circumstances in such first or second month;

(14) at the option of the State and with respect to such category or categories as the State may select and identify in the plan, provide that –

(A) the State agency will require each family to which the State provides (or, but for paragraph (22) or (32), would provide) aid to families with dependent children, as a condition to the continued receipt of such aid (or to continuing to be deemed to be a recipient of such aid), to report to the State agency monthly (or less frequently in the case of such categories of recipients as the State may select) on –

(i) the income of the family, the composition of the family, and other relevant circumstances during the prior month; and

(ii) the income and resources the family expects to receive, or any changes in circumstances affecting continued eligibility for, or amount of benefits, the family expects to occur, in that month or in future months; and

(B) in addition to any action that may be appropriate based on other reports or information received by the State agency, the State agency will –

(i) take prompt action to adjust the amount of assistance payable, as may be appropriate, on the basis of the information contained in the report (or upon the failure of the family to submit a timely report); and

(ii) give the family an appropriate explanatory notice concurrent with any action taken under clause (i);.

(15) provide (A) for the development of a program, for each appropriate relative and dependent child receiving aid under the plan and for each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under paragraph (7), for preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life, and for implementing such program by assuring that in all appropriate cases (including minors who can be considered to be sexually active) family planning services are offered to them and are provided promptly (directly or under arrangements with others) to all individuals voluntarily requesting such services, but acceptance of family planning services provided under the plan shall be voluntary on the part of such members and

individuals and shall not be a prerequisite to eligibility for or the receipt of any other service under the plan; and (B) to the extent that services provided under this paragraph are furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services;

(16) provide that the State agency will –

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;

(17) provide that if a child or relative applying for or receiving aid to families with dependent children, or any other person whose need the State considers when determining the income of a family, receives in any month an amount of earned or unearned income which, together with all other income for that month not excluded under paragraph (8), exceeds the State's standard of need applicable to the family of which he is a member –

(A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all other income

received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family, and

(B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A);

except that the State may at its option recalculate the period of ineligibility otherwise determined under subparagraph (A) (but only with respect to the remaining months in such period) in any one or more of the following cases: (i) an event occurs which, had the family been receiving aid under the State plan for the month of the occurrence, would result in a change in the amount of aid payable for such month under the plan, or (ii) the income received has become unavailable to the members of the family for reasons that were beyond the control of such members, or (iii) the family incurs, becomes responsible for, and pays medical expenses (as allowed by the State) in a month of ineligibility determined under subparagraph (A) (which expenses may be considered as an offset against the amount of income received in the first month of such ineligibility);

(18) provide that no family shall be eligible for aid under the plan for any month if, for that month, the total income of the family (other than payments under the plan), without application of paragraph (8), other than paragraph (8)(A)(v) or 8(A)(viii), exceeds 185 percent of the State's standard of need for a family of the same composition, except that in determining the total income of the family the State may exclude any earned income of a dependent child who is a full-time

student, in such amounts and for such period of time (not to exceed 6 months) as the State may determine;

(19) provide –

(A) that the State has in effect and operation a job opportunities and basic skills training program which meets the requirements of part F of this subchapter;

(B) that –

(i) the State will (except as otherwise provided in this paragraph or part F of this subchapter), to the extent that the program is available in the political subdivision involved and State resources otherwise permit –

(I) require all recipients of aid to families with dependent children in such subdivision with respect to whom the State guarantees child care in accordance with section 602(g) of this title to participate in the program; and

(II) allow applicants for and recipients of aid to families with dependent children (and individuals who would be recipients of such aid if the State had not exercised the option under section 607(b)(2)(B)(i) of this title) who are not required under subclause (I) to participate in the program to do so on a voluntary basis;

(ii) in determining the priority of participation by individuals from among those groups described in clauses (i), (ii), (iii), and (iv) of section 603(*l*)(2)(B) of this title, the

State will give first consideration to applicants for or recipients of aid to families with dependent children within any such group who volunteer to participate in the program;

(iii) if an exempt participant drops out of the program without good cause after having commenced participation in the program, he or she shall thereafter not be given priority so long as other individuals are actively seeking to participate; and

(iv) the State need not require or allow participation of an individual in the program if as a result of such participation the amount payable to the State for quarters in a fiscal year with respect to the program would be reduced pursuant to section 603(*l*)(2) of this title;

(C) that an individual may not be required to participate in the program if such individual –

(i) is ill, incapacitated, or of advanced age;

(ii) is needed in the home because of the illness or incapacity of another member of the household;

(iii) subject to subparagraph (D) –

(I) is the parent or other relative of a child under 3 years of age (or, if so provided in the State plan, under any age that is less than 3 years but not less than one year) who is personally providing care for the child, or

(II) is the parent or other relative personally providing care for a child

under 6 years of age, unless the State assures that child care in accordance with section 602(g) of this title will be guaranteed and that participation in the program by the parent or relative will not be required for more than 20 hours a week;

(iv) works 30 or more hours a week;

(v) is a child who is under age 16 or attends, full-time, an elementary, secondary, or vocational (or technical) school;

(vi) is pregnant if it has been medically verified that the child is expected to be born in the month in which such participation would otherwise be required or within the 6-month period immediately following such month; or

(vii) resides in an area of the State where the program is not available;

(D) that, in the case of a family eligible for aid to families with dependent children by reason of the unemployment of the parent who is the principal earner, subparagraph (C)(iii) shall apply only to one parent, except that, in the case of such a family, the State may at its option make such subparagraph inapplicable to both of the parents (and require their participation in the program) if child care in accordance with section 602(g) of this title is guaranteed with respect to the family;

(E) that –

(i) to the extent that the program is available in the political subdivision

involved and State resources otherwise permit, in the case of a custodial parent who has not attained 20 years of age, has not successfully completed a high-school education (or its equivalent), and is required to participate in the program (including an individual who would otherwise be exempt from participation in the program solely by reason of subparagraph (C)(iii)), the State agency (subject to clause (ii)) will require such parent to participate in an educational activity; and

(ii) the State agency may –

(I) require a parent described in clause (i) (notwithstanding the part-time requirement in subparagraph (C)(iii)(II)) to participate in educational activities directed toward the attainment of a high school diploma or its equivalent on a full-time (as defined by the educational provider) basis,

(II) establish criteria in accordance with regulations of the Secretary under which custodial parents described in clause (i) who have not attained 18 years of age may be exempted from the school attendance requirement under such clause, or

(III) require a parent described in clause (i) who is age 18 or 19 to participate in training or work activities (in lieu of the educational activities under such clause) if such parent fails to make good progress in successfully completing such educational activities or if it is determined (prior to any assignment of

the individual to such educational activities) pursuant to an educational assessment that participation in such educational activities is inappropriate for such parent;

(F) that –

(i) if the parent or other caretaker relative or any dependent child in the family is attending (in good standing) an institution of higher education (as defined in section 1088(a) of Title 20), or a school or course of vocational or technical training (not less than half time) consistent with the individual's employment goals, and is making satisfactory progress in such institution, school, or course, at the time he or she would otherwise commence participation in the program under this section, such attendance may constitute satisfactory participation in the program (by that caretaker or child) so long as it continues and is consistent with such goals;

(ii) any other activities in which an individual described in clause (i) participates may not be permitted to interfere with the school or training described in that clause;

(iii) the costs of such school or training shall not constitute federally reimbursable expenses for purposes of section 603 of this title; and

(iv) the costs of day care, transportation, and other services which are necessary (as determined by the State agency) for such attendance in accordance with subsection (g) of this section are eligible for Federal reimbursement;

(G) that –

(i) if an individual who is required by the provisions of this paragraph to participate in the program or who is so required by reason of the State's having exercised the option under subparagraph (D) fails without good cause to participate in the program or refuses without good cause to accept employment in which such individual is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined to be a bona fide offer of employment –

(I) the needs of such individual (whether or not section 607 of this title applies) shall not be taken into account in making the determination with respect to his or her family under paragraph (7) of this subsection, and if such individual is a parent or other caretaker relative, payments of aid for any dependent child in the family in the form of payments of the type described in section 606(b)(2) of this title (which in such a case shall be without regard to clauses (A) through (D) thereof) will be made unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made; and

(II) if such individual is a member of a family which is eligible for aid to families with dependent children by reason of section 607 of this title, and his or her spouse is not participating in the

program, the needs of such spouse shall also not be taken into account in making such determination;

(ii) any sanction described in clause (i) shall continue –

(I) in the case of the individual's first failure to comply, until the failure to comply ceases;

(II) in the case of the individual's second failure to comply, until the failure to comply ceases or 3 months (whichever is longer); and

(III) in the case of any subsequent failure to comply, until the failure to comply ceases or 6 months (whichever is longer);

(iii) the State will promptly remind any individual whose failure to comply has continued for 3 months, in writing, of the individual's option to end the sanction by terminating such failure; and

(iv) no sanction shall be imposed under this subparagraph –

(I) on the basis of the refusal of an individual described in subparagraph (C)(iii)(II) to accept employment, if the employment would require such individual to work more than 20 hours a week, or

(II) on the basis of the refusal of an individual to participate in the program or accept employment, if child care (or

day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate in the program or accept employment, such care is not available, and the State agency fails to provide such care; and

(H) the State agency may require a participant in the program to accept a job only if such agency assures that the family of such participant will experience no net loss of cash income resulting from acceptance of the job; and any costs incurred by the State agency as a result of this subparagraph shall be treated as expenditures with respect to which section 603(a)(1) or 603(a)(2) of this title applies;

(20) provide that the State has in effect a State plan for foster care and adoption assistance approved under part E of this subchapter;

(21) provide –

(A) that, for purposes of this part, participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept employment; and

(B) (i) that aid to families with dependent children is not payable to a family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and (ii) that no individual's needs shall be included in determining the amount of aid payable for any month to a family under the plan if, on the last day of such month, such individual is participating in a strike;

(22) provide that the State agency will promptly take all necessary steps to correct any overpayment

or underpayment of aid under the State plan, and, in the case of –

(A) an overpayment to an individual who is a current recipient of such aid (including a current recipient whose overpayment occurred during a prior period of eligibility), recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member, except that such recovery shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income (without application of paragraph (8)), is less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income (and, in the case of an individual to whom no payment is made for a month solely by reason of recovery of an overpayment, such individual shall be deemed to be a recipient of aid for such month);

(B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State law against the income or resources of the individual or the family; and

(C) an underpayment, the corrective payment shall be disregarded in determining the income of the family, and shall be disregarded in determining its resources in the month the corrective payment is made and in the following month;

except that no recovery need be attempted or carried out under subparagraph (B) in any case, other than a case involving fraud on the part of the recipient,

where (as determined by the State agency in accordance with criteria for determining cost-effectiveness, and with dollar limitations, which shall be prescribed by the Secretary in regulations) the cost of recovery would equal or exceed the amount of the overpayment involved;

(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted;

(24) provide that if an individual is receiving benefits under subchapter XVI of this chapter or his costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made to his or her minor parent as provided in section 675(4)(B) of this title, then, for the period for which such benefits are received or such costs are so covered, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this subchapter and his income and resources shall not be counted as income and resources of a family under this subchapter;

(25) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title;

(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required –

(A) to assign the State any rights to support from any other person such applicant may have

(i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed;

(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child, unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed; and that, if the relative with whom a child is living is found to be ineligible because of failure to comply with the requirements of subparagraphs (A) and (B) of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 606(b)(2) of this title (without regard to clauses (A) through (D) of such section) unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made; and

(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the State's plan for medical assistance under subchapter XIX of this chapter, unless such individual has good cause for refusing to cooperate as

determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; but the State shall not be subject to any financial penalty in the administration or enforcement of this subparagraph as a result of any monitoring, quality control, or auditing requirements;

(27) provide that the State has in effect a plan approved under part D of this subchapter and operates a child support program in substantial compliance with such plan;

(28) provide that, in determining the amount of aid to which an eligible family is entitled, any portion of the amounts collected in any particular month as child support pursuant to a plan approved under part D of this subchapter, and retained by the State under section 657 of this title, which (under the State plan approved under this part as in effect both during July 1975 and during that particular month) would not have caused a reduction in the amount of aid paid to the family if such amounts had been paid directly to the family, shall be added to the amount of aid otherwise payable to such family under the State plan approved under this part;

(29) Repealed. Pub.L. 98-369, Title VI, § 2651(b)(2), July 18, 1984, 98 Stat. 1149

(30) at the option of the State, provide for the establishment and operation, in accordance with an (initial and annually updated) advance automated data processing planning document approved under subsection (e) of this section, of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of the State plan for aid to families with dependent children approved under this part,

so as (A) to control and account for (i) all the factors in the total eligibility determination process under such plan for aid (including but not limited to (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal ZIP codes), of all applicants and recipients of such aid and the relative with whom any child who is such an applicant or recipient is living) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction, (II) checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra- and inter-State, for determination and verification of eligibility and payment pursuant to requirements imposed by other provisions of this chapter), (ii) the costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid, (B) to notify the appropriate officials of child support, food stamp, social service, and medical assistance programs approved under subchapter XIX of this chapter whenever the case becomes ineligible or the amount of aid or services is changed, and (C) to provide for security against unauthorized access to, or use of, the data in such system;

(31) provide that, in making the determination for any month under paragraph (7), the State agency shall take into consideration so much of the income of the dependent child's stepparent living in the same home as such child as exceeds the sum of (A) the first $90 of the total of such stepparent's earned income for such month, (B) the State's standard of need under such plan for a family of the same composition as the stepparent and those other individuals living in the same household as the dependent

child and claimed by such stepparent as dependents for purposes of determining his Federal personal income tax liability but whose needs are not taken into account in making the determination under paragraph (7), (C) amounts paid by the stepparent to individuals not living in such household and claimed by him as dependents for purposes of determining his Federal personal income tax liability, and (D) payments by such stepparent of alimony or child support with respect to individuals not living in such household;

(32) provide that no payment of aid shall be made under the plan for any month if the amount of such payment, as determined in accordance with the applicable provisions of the plan and of this part, would be less than $10, but an individual with respect to whom a payment of aid under the plan is denied solely by reason of this paragraph is deemed to be a recipient of aid but shall not be eligible to participate in a community work experience program;

(33) provide that in order for any individual to be considered a dependent child, a caretaker relative whose needs are to be taken into account in making the determination under paragraph (7), or any other person whose needs should be taken into account in making such a determination with respect to the child or relative, such individual must be either (A) a citizen, or (B) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 1157(c) of Title 8 (or of section 1153(a)(7) of Title 8

prior to April 1, 1980), or as a result of the application of the provisions of section 1158 or 1182(d)(5) of Title 8);

(34) provide that both the standard of need applied to a family and the amount of aid determined to be payable, when not a whole dollar amount, shall be rounded to the next lower whole dollar amount;

(35) Repealed. Pub.L. 100-485, Title II, § 202(b)(3), Oct. 13, 1988, 102 Stat. 2377

(36) provide, at the option of the State, that in making the determination for any month under paragraph (7), the State agency shall not include as income any support or maintenance assistance furnished to or on behalf of the family which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support and maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy;

(37) provide that if any family becomes ineligible to receive aid to families with dependent children because of hours of or income from employment of the caretaker relative or because of paragraph (8)(B)(ii)(II), having received such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under subchapter XIX of this

chapter for an extended period or periods as provided in section 1396r-6 of this title, and that the family will be appropriately notified of such extension (in the State agency's notice to the family of the termination of its eligibility for such aid) as required by section 1396r-6(a)(2) of this title;

(38) provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include –

(A) any parent of such child, and

(B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 606(a) of this title or in section 607(a) of this title,

if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 405(j) of this title, in the case of benefits provided under subchapter II of this chapter);

(39) provide that in making the determination under paragraph (7) with respect to a dependent child whose parent is under the age of 18, the State agency shall (except as otherwise provided in this part) include any income of such minor's own parents who are living in the same home as such minor and dependent child, to the same extent that income of a stepparent is included under paragraph (31);

(40) provide, if the State has elected to establish and operate a fraud control program under section 616 of this title, that the State will submit to the

Secretary (with such revisions as may from time to time be necessary) a description of and budget for such program, and will operate such program in full compliance with that section;

(41) provide that aid to families with dependent children will be provided under the plan with respect to dependent children of unemployed parents in accordance with section 607 of this title;

(42) provide that if, under section 607(b)(2)(B)(i) of this title, the State limits the number of months for which a family may receive aid to families with dependent children, the State shall provide medical assistance to all members of the family under the State's plan approved under subchapter XIX of this chapter, without time limitation;

(43) at the option of the State, provide that –

(A) subject to subparagraph (B), in the case of any individual who is under the age of 18 and has never married, and who has a dependent child in his or her care (or is pregnant and is eligible for aid to families with dependent children under the State plan) –

(i) such individual may receive aid to families with dependent children under the plan for the individual and such child (or for herself in the case of a pregnant woman) only if such individual and child (or such pregnant woman) reside in a place of residence maintained by a parent, legal guardian, or other adult relative of such individual as such parent's, guardian's, or adult relative's own home, or reside in a foster home, maternity home, or other adult-supervised supportive living arrangement; and

(ii) such aid (where possible) shall be provided to the parent, legal guardian, or other adult relative on behalf of such individual and child; and

(B) subparagraph (A) does not apply in the case where –

(i) such individual has no parent or legal guardian of his or her own who is living and whose whereabouts are known;

(ii) no living parent or legal guardian of such individual allows the individual to live in the home of such parent or guardian;

(iii) the State agency determines that the physical or emotional health or safety of such individual or such dependent child would be jeopardized if such individual and such dependent child lived in the same residence with such individual's own parent or legal guardian;

(iv) such individual lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of any such dependent child or the individual having made application for aid to families with dependent children under the plan; or

(v) the State agency otherwise determines (in accordance with regulations issued by the Secretary) that there is good cause for waiving such subparagraph;

(44) provide that the State agency shall –

(A) be responsible for assuring that the benefits and services under the programs under

this part, part D, and part F of this subchapter are furnished in an integrated manner, and

(B) consistent with the provisions of this subchapter, ensure that all applicants for and recipients of aid to families with dependent children are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations, and are notified of the paternity establishment and child support services for which they may be eligible; and

(45) provide (in accordance with regulations issued by the Secretary) for appropriate measures to detect fraudulent applications for aid to families with dependent children prior to the establishment of eligibility for such aid.

The Secretary may waive any of the requirements imposed under or in connection with paragraphs (13) and (14) of this subsection to the extent necessary to make such requirements compatible with the corresponding reporting and budgeting requirements by the Food Stamp Act of 1977 [7 U.S.C.A. § 2011 et seq.].

* * *

§ 603. Payments to States

(a) Computation of amounts

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958 –

(1) in the case of any State other than Puerto Rico, the Virgin Islands, Guam, and

American Samoa, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to families with dependent children under the State plan –

(A) five-sixths of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $18 multiplied by the total number of recipients of aid to families with dependent children for such month (which total number, for purposes of this subsection, means (i) the number of individuals with respect to whom such aid in the form of money payments is paid for such month, plus (ii) the number of individuals, not counted under clause (i), with respect to whom payments described in section 606(b)(2) of this title are made in such month and included as expenditures for purposes of this paragraph or paragraph (2)); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (i) the product of $32 multiplied by the total number of recipients of aid to families with dependent children (other than such aid in the form of foster care) for such month, plus (ii) the product of $100 multiplied by the total number of

recipients of aid to families with dependent children in the form of foster care for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa, an amount equal to one-half of the total of the sums expended during such quarter as aid to families with dependent children under the State plan, not counting so much of any expenditure with respect to any month as exceeds $18 multiplied by the total number of recipients of such aid for such month; and

(3) in the case of any State, 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, except that no payment shall be made with respect to amounts expended in connection with the provision of any service described in section 1397a(a) of this title other than services furnished pursuant to section 602(g) of this title; and

(4) Repealed. Pub.L. 90-248, Title II, § 201(e)(3), Jan. 2, 1968, 81 Stat. 880

(5) in the case of any State, an amount equal to 50 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children.

No payment shall be made under this subsection with respect to amounts paid to supplement or otherwise increase the amount of aid to families with dependent children found payable in accordance with section 602(a)(13) of this title if such amount is determined to

have been paid by the State in recognition of the current or anticipated needs of a family (other than with respect to the first or first and second months of eligibility), but any such amount, if determined to have been paid by the State in recognition of the difference between the current or anticipated needs of a family for a month based upon actual income or other relevant circumstances for such month, and the needs of such family for such month based upon income and other relevant circumstances as retrospectively determined under section 602(a)(13)(A)(ii) of this title, shall not be considered income within the meaning of section 602(a)(13) of this title for the purpose of determining the amount of aid in the succeeding months.

(b) Method of computation and payment

The method of computing and paying such amounts shall be as follows:

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records

showing the number of dependent children in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to aid to families with dependent children furnished under the State plan, and (C) reduced by such amount as is necessary to provide the "appropriate reimbursement of the Federal Government" that the State is required to make under section 657 of this title out of that portion of child support collections retained by it pursuant to such section; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Department of the Treasury and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the

Secretary of Health and Human Services, the amount so certified.

(c), (d) Repealed. Pub.L. 100-485, Title II, § 202(b)(5), (6), Oct. 13, 1988, 102 Stat. 2377

(e) Uniform reporting requirements

In order to assist in obtaining the information needed to carry out subsection (b)(1) of this section and otherwise to perform his duties under this part, the Secretary shall establish uniform reporting requirements under which each State will be required periodically to furnish such information and data as the Secretary may determine to be necessary to ensure that sections 602(a)(37), 602(a)(43), and 602(g)(1)(A) of this title, are being effectively implemented, including at a minimum the average monthly number of families assisted under each such section, the types of such families, the amounts expended with respect to such families, and the length of time for which such families are assisted. The information and data so furnished with respect to families assisted under section 602(g) of this title shall be separately stated with respect to families who have earnings and those who do not, and with respect to families who are receiving aid under the State plan and those who are not.

(f) Reduction in amount; family planning services; aid to families with dependent children

Notwithstanding any other provision of this section, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters in fiscal years beginning after June 30, 1973, be reduced by 1

per centum (calculated without regard to any reduction under subsection (g) of this section) of such amount if such State –

(1) in the immediately preceding fiscal year failed to carry out the provisions of section 602(a)(15)(B) of this title as pertain to requiring the offering and arrangement for provision of family planning services; or

(2) in the immediately preceding fiscal year (but, in the case of the fiscal year beginning July 1, 1972, only considering the third and fourth quarters thereof), failed to carry out the provisions of section 602(a)(15)(B) of this title with respect to any individual who, within such period or periods as the Secretary may prescribe, has been an applicant for or recipient of aid to families with dependent children under the plan of the State approved under this part.

(g) Repealed. Pub.L. 97-35, Title XXI, § 2181(a)(1), Aug. 13, 1981, 95 Stat. 815

(h) Reduction in amount; suspension; continuation; determination of substantial compliance by State

(1) Notwithstanding any other provision of this Act, if a State's program operated under part D of this subchapter is found as a result of a review conducted under section 652(a)(4) of this title not to have complied substantially with the requirements of such part for any quarter beginning after September 30, 1983, and the Secretary determines that the State's program is not complying substantially with such requirements at the time such finding is made, the amounts otherwise payable to the

State under this part for such quarter and each subsequent quarter, prior to the first quarter throughout which the State program is found to be in substantial compliance with such requirements, shall be reduced (subject to paragraph (2)) by –

(A) not less than one nor more than two percent, or

(B) not less than two nor more than three percent, if the finding is the second consecutive such finding made as a result of such a review, or

(C) not less than three nor more than five percent, if the finding is the third or a subsequent consecutive such finding made as a result of such a review.

(2)(A) The reductions required under paragraph (1) shall be suspended for any quarter if –

(i) the State submits a corrective action plan, within a period prescribed by the Secretary following notice of the finding under paragraph (1), which contains steps necessary to achieve substantial compliance within a time period which the Secretary finds to be appropriate;

(ii) the Secretary approves such corrective action plan (and any amendments thereto) as being sufficient to achieve substantial compliance; and

(iii) the Secretary finds that the corrective action plan (and any amendment thereto approved by the Secretary under clause (ii)), is being fully implemented by the State and that the State is progressing in accordance with the

timetable contained in the plan to achieve substantial compliance with such requirements.

(B) A suspension of the penalty under subparagraph (A) shall continue until such time as the Secretary determines that –

(i) the State has achieved substantial compliance,

(ii) the State is no longer implementing its corrective action plan, or

(iii) the State is implementing or has implemented its corrective action plan but has failed to achieve substantial compliance within the appropriate time period (as specified in subparagraph (A)(i)).

(C)(i) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(i), the penalty shall not be applied.

(ii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(ii), the penalty shall be applied as if the suspension had not occurred.

(iii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(iii), the penalty shall be applied to all quarters ending after the expiration of the time period specified in such subparagraph (and prior to the first quarter throughout which the State program is found to be in substantial compliance).

(3) For purposes of this subsection, section 602(a)(27) of this title, and section 652(a)(4) of this title, a State which is not in full compliance with the requirements of this part shall be determined to be in substantial

compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the child support enforcement program.

* * *

§ 604. Deviation from plan

(a) Stoppage of payments

In the case of any State plan for aid and services to needy families with children which has been approved by the Secretary, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds –

> **(1)** that the plan has been so changed as to impose any residence requirement prohibited by section 602(b) of this title, or that in the administration of the plan any such prohibited required is imposed, with the knowledge of such State agency, in a substantial number of cases; or
>
> **(2)** that in the administration of the plan there is a failure to comply substantially with any provision required by section 602(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit

payments to categories under or parts of the State plan not affected by such failure).

(b) Compliance with State statute

No payment to which a State is otherwise entitled under this part for any period before September 1, 1962, shall be withheld by reason of any action taken pursuant to a State statute which requires that aid be denied under the State plan approved under this part with respect to a child because of the conditions in the home in which the child resides; nor shall any such payment be withheld for any period beginning on or after such date by reason of any action taken pursuant to such a statute if provision is otherwise made pursuant to a State statute for adequate care and assistance with respect to such child.

(c) Good faith effort to comply

No State shall be found, prior to January 1, 1977, to have failed substantially to comply with the requirements of section 602(a)(27) of this title if, in the judgment of the Secretary, such State is making a good faith effort to implement the program required by such section.

(d) Reduction in amount payable

After December 31, 1976, in the case of any State which is found to have failed substantially to comply with the requirements of section 602(a)(27) of this title, the reduction in any amount payable to such State required to be imposed under section 603(h) of this title shall be imposed in lieu of any reduction, with respect to

such failure, which would otherwise be required to be imposed under this section.

* * *

PART D – CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

CROSS REFERENCES

§ 651. Authorization of appropriations

For the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under Part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

* * *

§ 652. Duties of Secretary

(a) Establishment of separate organizational unit; duties

The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall –

(1) establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support and support for the

spouse (or former spouse) with whom the absent parent's child is living as he determines to be necessary to assure that such programs will be effective;

(2) establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part;

(3) review and approve State plans for such programs;

(4) evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title), conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 603(h) of this title whether the actual operation of such programs in each State conforms to the requirements of this part;

(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State;

(6) maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part and of the costs incurred in collecting such amounts;

(7) provide technical assistance to the States to help them establish effective systems for collecting

child and spousal support and establishing paternity;

(8) receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against absent parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the absent parent within a reasonable time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications;

(9) operate the Parent Locator Service established by section 653 of this title; and

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

(A) total program costs and collections set forth in sufficient detail to show the cost to the States and the Federal Government, the distribution of collections to families, State and local governmental units, and the Federal Government; and an identification of the financial impact of the provisions of this part;

(B) costs and staff associated with the Office of Child Support Enforcement;

(C) the following data, with the data required under each clause being separately stated for cases where the child is receiving aid to families with dependent children (or foster care maintenance payments under part E), cases where the child was formerly receiving such aid

or payments and the State is continuing to collect support assigned to it under section 602(a)(26) or 671(a)(17) of this title, and all other cases under this part:

(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted, and the total amount of such obligations;

(ii) the total number of cases in which a support obligation has been established, and the total amount of such obligations;

(iii) the number of cases described in clause (i) in which support was collected during such fiscal year, and the total amount of such collections;

(iv) the number of cases described in clause (ii) in which support was collected during such fiscal year, and the total amount of such collections; and

(v) the number of child support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;

(D) the status of all State plans under this part as of the end of the fiscal year last ending before the report is submitted, together with an explanation of any problems which are delaying or preventing approval of State plans under this part;

(E) data, by State, on the use of the Federal Parent Locator Service, and the number of locate

requests submitted without the absent parent's social security account number;

(F) the number of cases, by State, in which an applicant for or recipient of aid under a State plan approved under part A of this subchapter has refused to cooperate in identifying and locating the absent parent and the number of cases in which refusal so to cooperate is based on good cause (as determined in accordance with the standards referred to in section 602(a)(26)(B)(ii) of this title);

(G) data, by State, on the use of Federal courts and on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government;

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report; and

(I) the amount of administrative costs which are expended in each functional category of expenditures, including establishment of paternity.

The information contained in any such report under subparagraph (A) shall specifically include (i) the total amount of child support payments collected as a result of services furnished during the fiscal year involved to individuals under section 654(6) of this title, (ii) the cost to the States and to the Federal Government of furnishing

such services to those individuals, and (iii) the extent to which the furnishing of such services was successful in providing sufficient support to those individuals to assure that they did not require assistance under the State plan approved under part A of this subchapter.

(b) Certification of child support obligations to Secretary of Treasury for collection

The Secretary shall, upon the request of any State having in effect a State plan approved under this part, certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of Title 26 the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter) which is assigned to such State or is undertaken to be collected by such State pursuant to section 654(6) of this title. No amount may be certified for collection under this subsection except the amount of the delinquency under a court or administrative order for support and upon a showing by the State that such State has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms, and upon an agreement that the State will reimburse the Secretary of the Treasury for any costs involved in making the collection. All reimbursements shall be credited to the appropriation accounts which bore all or part of the costs involved in making the collections. The Secretary after consultation with the Secretary of the Treasury may, by regulation, establish criteria for accepting amounts for collection and for making certification under this subsection including imposing

such limitations on the frequency of making such certifications under this subsection.

(c) Payment of child support collections to States

The Secretary of the Treasury shall from time to time pay to each State for distribution in accordance with the provisions of section 657 of this title the amount of each collection made on behalf of such State pursuant to subsection (b) of this section.

(d) Child support management information system

(1) Except as provided in paragraph (3), the Secretary shall not approve the initial and annually updated advance automated data processing planning document, referred to in section 654(16) of this title, unless he finds that such document, when implemented, will generally carry out the objectives of the management system referred to in such subsection, and such document –

(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system,

(B) contains a description of the proposed management system referred to in section 655(a)(1)(B) of this title, including a description of information flows, input data, and output reports and uses,

(C) sets forth the security and interface requirements to be employed in such management system,

(D) describes the projected resource requirements for staff and other needs, and the resources

available or expected to be available to meet such requirements,

(E) contains an implementation plan and backup procedures to handle possible failures,

(F) contains a summary of proposed improvement of such management system in terms of qualitative and quantitative benefits, and

(G) provides such other information as the Secretary determines under regulation is necessary.

(2)(A) The Secretary shall through the separate organizational unit established pursuant to subsection (a) of this section, on a continuing basis, review, assess, and inspect the planning, design, and operation of, management information systems referred to in section 655(a)(1)(B) of this title, with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under paragraph (1) and the conditions specified under section 654(16) of this title.

(B) If the Secretary finds with respect to any statewide management information system referred to in section 655(a)(1)(B) of this title that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automated data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.

(3) The Secretary may waive any requirement of paragraph (1) or any condition specified under section 654(16) of this title with respect to a State if –

(A) the State demonstrates to the satisfaction of the Secretary that the State has an alternative system or systems that enable the State, for purposes of section 603(h) of this title, to be in substantial compliance with other requirements of this part; and

(B)(i) the waiver meets the criteria of paragraphs (1), (2), and (3) of section 1315(c) of this title, or

(ii) the State provides assurances to the Secretary that steps will be taken to otherwise improve the State's child support enforcement program.

(e) Technical assistance to States

The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 655(a)(1)(B) of this title.

(f) Regulations

The Secretary shall issue regulations to require that State agencies administering the child support enforcement program under this part petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. Such regulation shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under subchapter XIX of this chapter

with respect to the availability of health insurance coverage.

(g) Performance standards for State paternity establishment programs

(1) A State's program under this part shall be found, for purposes of section 603(h) of this title, not to have complied substantially with the requirements of this part unless, for any fiscal year beginning on or after October 1, 1991, its paternity establishment percentage for such fiscal year equals or exceeds –

(A) 50 percent;

(B) the paternity establishment percentage of the State for the fiscal year 1988, increased by the applicable number of percentage points; or

(C) the paternity establishment percentage determined with respect to all States for such fiscal year.

(2) For purposes of this section –

(A) the term "paternity establishment percentage" means, with respect to a State (or all States, as the case may be) for a fiscal year, the ratio (expressed as a percentage) that the total number of children –

(i) who have been born out of wedlock,

(ii)(I) except as provided in the last sentence of this paragraph, with respect to whom aid is being paid under the State's plan approved under part A of this subchapter (or under all such plans) for such fiscal year, or (II) with respect to whom services are being provided

under the State's plan approved under this part (or under all such plans) for the fiscal year pursuant to an application submitted under section 654(6) of this title, and

(iii) the paternity of whom has been established,

bears to the total number of children who have been born out of wedlock and (except as provided in such last sentence) with respect to whom aid is being paid under the State's plan approved under part A or E of this subchapter (or under all such plans) for such fiscal year or with respect to whom services were being provided under the State's plan approved under this part (or under all such plans) for the fiscal year pursuant to an application submitted under section 654(6) of this title; and

(B) the applicable number of percentage points means, with respect to a fiscal year (beginning with the fiscal year 1991), 3 percentage points multiplied by the number of fiscal years after the fiscal year 1989 and before the beginning of such fiscal year.

For purposes of subparagraph (A), the total number of children shall not include any child who is a dependent child by reason of the death of a parent or any child with respect to whom an applicant or recipient is found to have good cause for refusing to cooperate under section 602(a)(26) of this title.

(3)(A) The requirements of this subsection are in addition to and shall not supplant any other requirement

(that is not inconsistent with such requirements) established in regulations by the Secretary for the purpose of determining (for purposes of section 603(h) of this title) whether the program of a State operated under this part shall be treated as complying substantially with the requirements of this part.

(B) The Secretary may modify the requirements of this subsection to take into account such additional variables as the Secretary identifies (including the percentage of children born out-of-wedlock in a State) that affect the ability of a State to meet the requirements of this subsection.

(C) The Secretary shall submit an annual report to the Congress that sets forth the data upon which the paternity establishment percentages for States for a fiscal year are based, lists any additional variables the Secretary has identified under subparagraph (A), and describes State performance in establishing paternity.

(h) Prompt State response to requests for child support assistance

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must accept and respond to requests (from States, jurisdictions thereof, or individuals who apply for services furnished by the State agency under this part or with respect to whom an assignment under section 602(a)(26) of this title is in effect) for assistance in establishing and enforcing support orders, including requests to locate absent parents, establish paternity, and initiate proceedings to establish and collect child support awards.

(i) Prompt State distribution of amounts collected as child support

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must distribute, in accordance with section 657 of this section, amounts collected as child support pursuant to the State's plan approved under this part.

* * *

§ 654. State plan for child and spousal support

A State plan for child and spousal support must –

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) provide that such State will undertake –

(A) in the case of a child born out of wedlock with respect to whom an assignment under section 602(a)(26) of this title or section 1396k of this title is effective, to establish the paternity of such child, unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so, or, in the case of such a child with respect to whom an assignment

under section 1396k of this title is in effect, the State agency administering the plan approved under subchapter XIX of this chapter determines pursuant to section 1396k(a)(1)(B) of this title that it is against the best interests of the child to do so, and

(B) in the case of any child with respect to whom such assignment is effective, including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter, to secure support for such child from his parent (or from any other person legally liable for such support), and from such parent for his spouse (or former spouse) receiving aid to families with dependent children or medical assistance under a State plan approved under subchapter XIX of this chapter (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan), utilizing any reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A or E of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so), except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support;

(5) provide that (A) in any case in which support payments are collected for an individual with respect to whom an assignment under section

602(a)(26) of this title is effective, such payments shall be made to the State for distribution pursuant to section 657 of this title and shall not be paid directly to the family, and the individual will be notified at least annually of the amount of the support payments collected; except that this paragraph shall not apply to such payments for any month following the first month in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A of this subchapter; and (B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1396k of this title, such payments shall be made to the State for distribution pursuant to section 1396k of this title, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;

(6) provide that (A) the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, including support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan), (B) an application fee for furnishing such services shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed $25

(or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), (C) a fee of not more than $25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 664(a)(2) of this title, (D) a fee (in accordance with regulations of the Secretary) for performing genetic tests may be imposed on any individual who is not a recipient of aid under a State plan approved under part A of this subchapter, and (E) any costs in excess of the fees so imposed may be collected –

(i) from the parent who owes the child or spousal support obligation involved, or

(ii) at the option of the State, from the individual to whom such services are made available, but only if such State has in effect a procedure whereby all persons in such State having authority to order child or spousal support are informed that such costs are to be collected from the individual to whom such services were made available;

(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

(8) provide that the agency administering the plan will establish a service to locate absent parents utilizing –

(A) all sources of information and available records, and

(B) the Parent Locator Service in the Department of Health and Human Services;

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State –

(A) in establishing paternity, if necessary,

(B) in locating an absent parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State,

(C) in securing compliance by an absent parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State, and

(D) in carrying out other functions required under a plan approved under this part;

(10) provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system;

(11) provide that amounts collected as support shall be distributed as provided in section 657 of this title;

(12) provide that any payment required to be made under section 656 or 657 of this title to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children;

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating absent parents, establishing paternity, obtaining support orders, and collecting support payments;

(14) comply with such bonding requirements, for employees who receive, disburse, handle, or have access to, cash, as the Secretary shall by regulations prescribe;

(15) maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary);

(16) provide, at the option of the State, for the establishment, in accordance with an (initial and annually updated) advance automated data processing planning document approved under section 652(d) of this title, of a statewide automated data processing and information retrieval system designed effectively and efficiently to assist management in the administration of the State plan, in the State and localities thereof, so as (A) to control, account for, and monitor (i) all the factors in the

support enforcement collection and paternity determination process under such plan (including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra- and inter-State, and local agencies, (III) maintaining the data necessary to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities), (ii) the collection and distribution of support payments (both intra- and inter-State), the determination, collection, and distribution of incentive payments both inter- and intra-State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and (iii) the costs of all services rendered, either directly or by interfacing with State financial management and expenditure information, (B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program, (C) to provide for security against unauthorized access to, or use of, the data in such system, (D) to facilitate the development and improvement of the income withholding and other procedures required under section 666(a) of this title through the monitoring of support payments, the maintenance of accurate records

regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and (E) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement;

(17) in the case of a State which has in effect an agreement with the Secretary entered into pursuant to section 663 of this title for the use of the Parent Locator Service established under section 653 of this title, provide that the State will accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, will impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, will transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 664 of this title, and take all steps necessary to implement and utilize such procedures;

(19) provide that the agency administering the plan –

(A) shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation

Amendments of 1976, whether any individuals receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency, and

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met –

(i) through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law, or

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 662(e) of this title) to require the withholding of amounts from such compensation; and

(20) provide, to the extent required by section 666 of this title, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws;

(21)(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 666(e) of this title) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less

than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the absent parent owing the overdue support; and

(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed;

(22) in order for the State to be eligible to receive any incentive payments under section 658 of this title, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision;

(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained; and

(24) provide that if the State, as of October 13, 1988, does not have in effect an automated data processing and information retrieval system meeting all of the requirements of paragraph (16), the State –

(A) will submit to the Secretary by October 1, 1991, for review and approval by the Secretary

within 9 months after submittal an advance automated data processing planning document of the type referred to in such paragraph; and

(B) will have in effect by October 1, 1995, an operational automated data processing and information retrieval system, meeting all the requirements of that paragraph, which has been approved by the Secretary.

The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21).

* * *

§ 657. Distribution of proceeds

(a) Amount collected during fifteen month period beginning July 1, 1975

The amounts collected as child support by a State pursuant to a plan approved under this part during the 15 months beginning July 1, 1975, shall be distributed as follows:

(1) 40 per centum of the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without any decrease in the amount paid as assistance to such family during such month;

(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) which represent monthly support payments shall be

retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(b) Amount collected during any fiscal year beginning after September 30, 1976

The amounts collected as support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall (subject to subsection (d) of this section) be distributed as follows:

(1) of such amounts as are collected periodically which represent monthly support payments, the first $50 of any payments for a month received in that month, and the first $50 of payments for each prior month received in that month which were made by the absent parent in

the month when due, shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month;

(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) and which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court or administrative order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(c) Collection after termination of assistance; distribution of support proceeds

Whenever a family with respect to which child support enforcement services have been provided pursuant to section 654(4) of this title ceases to receive assistance under part A of this subchapter, the State shall provide appropriate notice to the family and continue to provide such services, and pay any amount of support collected, subject to the same conditions and on the same basis as in the case of the individuals to whom services are furnished pursuant to section 654(6) of this title, except that no application or other request to continue services shall be required of a family to which this subsection applies, and the provisions of section 654(6)(B) of this title may not be applied.

(d) Disposition of amounts collected by State as child support on behalf of children for whom public agencies make foster care payments

Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E of this subchapter –

> (1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of aid to families with dependent children) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).

* * *

45 C.F.R. Part 302 – State Plan Requirements

§ 302.0 Scope of this part.

This part defines the State plan provisions required for an approved plan under title IV-D of the Act.

§ 302.1 Definitions.

The definitions found in § 301.1 of this chapter also are applicable to this part.

§ 302.10 Statewide operations.

The State plan shall provide that:

(a) It will be in operation on a statewide basis in accordance with equitable standards for administration that are mandatory throughout the State;

(b) If administered by a political subdivision of the State, the plan will be mandatory on such political subdivision;

(c) The IV-D agency will assure that the plan is continuously in operation in all appropriate offices or agencies through:

(1) Methods for informing staff of State policies, standards, procedures and instructions; and

(2) Regular planned examination and evaluation of operations in local offices by regularly assigned State staff, including regular visits by such staff; and through reports, controls, or other necessary methods.

§ 302.11 State financial participation.

The State plan shall provide that the State will participate financially in the program.

§ 302.12 Single and separate organizational unit.

(a) The State plan shall provide for the establishment or designation of a single and separate organizational unit to administer the IV-D plan. Such unit is referred to as the IV-D agency. Under this requirement:

(1) The IV-D agency may be:

(i) Located in the single State agency designated pursuant to § 205.100 to administer title IV-A of the Act;

(ii) Located in any other agency of the State; or,

(iii) Established as a new agency of the State.

(2) The IV-D agency shall be responsible and accountable for the operation of the IV-D program. Except as provided in § 303.20 of this Part, the agency need not perform all the functions of the IV-D program so long as it insures that all these functions are being carried out properly, efficiently, and effectively;

(3) If the IV-D agency delegates any of the functions of the IV-D program to any other State or local agency or official, or any official with whom a cooperative agreement as described in § 302.34 has been entered into or purchases services from any person or private agency pursuant to § 304.22 of this Part, the IV-D agency shall have responsibility for securing compliance with the requirements of the State plan by such agency or officials.

(b) The State plan shall describe the structure of the IV-D agency and the distribution of responsibilities among the major divisions within the unit, and if it is located within another agency, show its place in such agency. If any of the IV-D program functions are to be performed outside of the IV-D agency then these functions shall be listed with the name of the organization responsible for performing them.

(Approved by the Office of Management and Budget under control number 0960-0253)

[40 FR 27159, June 26, 1975, as amended at 51 FR 37731. Oct. 24, 1986]

§ 302.13 Plan amendments.

(a) The State plan shall provide that the plan will be amended whenever necessary to reflect new or revised Federal statutes or regulations, or material change in any phase of State law, organization, policy of IV-D agency operation.

(b) *Federal financial participation.* Except where otherwise provided, Federal financial participation is available in the additional expenditures resulting from an amended provision of the State plan as of the first day of the calendar quarter in which an approvable amendment is submitted or the date on which the amended provision becomes effective in the State, whichever is later.

(Approved by the Office of Management and Budget under control number 0960-0253)

[40 FR 27159, June 26, 1975, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.14 Fiscal policies and accountability.

The State plan shall provide that the IV-D agency, in discharging its fiscal accountability, will maintain an accounting system and supporting fiscal records adequate to assure that claims for Federal funds are in accord with applicable Federal requirements. The retention and custodial requirements for these records are prescribed in 45 CFR Part 74.

§ 302.15 Reports and maintenance of records.

(a) The State plan shall provide that:

(1) The IV-D agency will maintain records necessary for the proper and efficient operation of the plan, including records regarding:

(i) Applications pursuant to § 302.33 for support services available under the State plan;

(ii) Location of absent parents, actions to establish paternity and obtain and enforce support, and the costs incurred in such actions;

(iii) Amount and sources of support collections and the distribution of these collections;

(iv) Any fees charged or paid for support enforcement services;

(v) Any other administrative costs;

(vi) Any other information required by the Office; and

(vii) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary.

The retention and custodial requirements for these records are prescribed in 45 CFR Part 74.

(2) The IV-D agency will make such reports in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports.

(b) *Conditions for optional use of microfilm copies.* Certified microfilm copies of the substantiating documents required for Federal audit and review purposes may be substituted for the originals (i.e., the originals may be destroyed), provided that:

(1) The IV-D agency can show, on the basis of a study of its record storage situation, that the use of microfilm copies is in the interest of efficiency and economy;

(2) The proposed microfilm system is adequate:

(i) To enable the IV-D agency to discharge its own audit responsibility for propriety of expenditures for which Federal financial participation is claimed and in no way hinders the IV-D agency's supervision and control of the programs; and

(ii) To enable the HHS Audit Agency and the Office to properly discharge their respective responsibilities for reviewing the manner in which all aspects of the Child Support Enforcement program are being administered in the State; and

(3) Prior approval is obtained from the regional office indicating that the system meets the conditions in paragraph (b)(2) of this section and that the proposed microfilming procedures are reliable and are supported by an adequate retrieval system.

(Approved by the Office of Management and Budget under control numbers 0960-0154, 0960-0226 and 0960-0238)

[40 FR 27159, June 26, 1975, as amended at 47 FR 57281, Dec. 23, 1982; 48 FR 51917, Nov. 15, 1983; 51 FR 37731, Oct. 24, 1986]

§ 302.17 Inclusion of State statutes.

The State plan shall provide a copy of State statutes, or regulations promulgated pursuant to such statutes and having the force of law (including citations of such statutes and regulations), that provide procedures to determine the paternity of a child born out of wedlock, to establish the child support obligation of a responsible parent, and to enforce a support obligation, including spousal support if appropriate.

(Approved by the Office of Management and Budget under control numbers 0960-0253 and 0960-0385)

[50 FR 19647, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.19 Bonding of employees.

The State plan shall provide that the following requirements and criteria to bond employees are in effect:

(a) *IV-D responsibility.* The IV-D agency will insure that every person, who has access to or control over funds collected under the child support enforcement program, is covered by a bond against loss resulting from employee dishonesty.

(b) *Scope.* The requirement in paragraph (a) of this section applies to every person who, as a regular part of his or her employment, receives, disburses, handles or has access to support collections, which includes:

(1) IV-D agency employees and employees of any other State or local agency to which IV-D functions have been delegated.

(2) Employees of a court or law enforcement official performing under a cooperative agreement with the IV-D agency.

(3) Employees of any private or governmental entity from which the IV-D agency purchases services.

(c) *Bond.* The bond will be for an amount which the State IV-D agency deems adequate to indemnify the State IV-D program for loss resulting from employee dishonesty.

(d) *Self-bonding System.* A State or political subdivision may comply with the requirement in paragraph (a) of this section:

(1) By means of a self-bonding system established under State law or,

(2) In the case of a political subdivision, by means of a self-bonding system approved by the State IV-D agency.

(e) *IV-D liability.* The requirements of this section do not reduce or limit the ultimate liability of the IV-D agency for losses of support collections from the State's IV-D program.

[44 FR 28803, May 17, 1979; 44 FR 45137, Aug. 1, 1979, as amended at 47 FR 57281, Dec. 23, 1982]

§ 302.20 Separation of cash handling and accounting functions.

The State plan shall provide that the following requirements and criteria to separate the cash handling and accounting functions are in effect.

(a) *IV-D responsibility.* The IV-D agency will maintain methods of administration designed to assure that persons responsible for handling cash receipts of support do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of support receipts. Such methods of administration shall follow generally recognized accounting standards.

(b) *Scope.* The requirement in paragraph (a) of this section applies to persons who participate in the collection, accounting or operating functions which include:

(1) IV-D agency employees and employees of any other State or local agency to which IV-D functions have been delegated.

(2) Employees of a court or law enforcement official performing under a cooperative agreement with the IV-D agency.

(3) Employees of any private or governmental entity from which the IV-D agency purchases services.

(c) *Exception.* The Regional Office may grant a waiver to sparsely populated geographical areas, where the requirements in paragraph (a) of this section would necessitate the hiring of unreasonable numbers of additional staff. The IV-D agency must document such administrative infeasibility and provide an alternative system of controls that reasonably insures that support collections will not be misused.

[44 FR 28803, May 17, 1979, as amended at 47 FR 57281, Dec. 23, 1982]

§ 302.30 Publicizing the availability of support enforcement services.

Effective October 1, 1985, the State plan shall provide that the State will publicize regularly and frequently the availability of support enforcement services under the plan through public service announcements. Publicity must include information on any application fees which may be imposed for such services and a telephone number or postal address where further information may be obtained.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19647, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.31 Establishing paternity and securing support.

The State plan shall provide that:

(a) The IV-D agency will undertake:

(1) In the case of a child born out of wedlock with respect to whom an assignment as defined in § 301.1 of this chapter is effective, to establish the paternity of such child; and

(2) In the case of any individual with respect to whom an assignment as defined in § 301.1 of this chapter is effective, to secure support for a child or children from any person who is legally liable for such support, using State laws and reciprocal arrangements adopted with other States when appropriate. Effective October 1, 1985, this includes securing support for a spouse or former spouse who is living with the child or children, but only if a support obligation has been established for that spouse and the child support obligation is being enforced under the title IV-D State plan.

(3) When assigned support payments are received and retained by an AFDC recipient, to proceed as follows:

(i) In States that implement the IV-A State plan requirements to count retained support payments as income under 45 CFR 233.20(a)(3)(v), the IV-D agency shall notify the IV-A agency whenever it discovers that directly received payments are being, or have been, retained; or

(ii) In States that do not implement the IV-A State plan requirements to count retained support payments as income to meet need, the IV-D agency shall recover the retained support payments. This recovery by the IV-D

agency shall be carried out in accordance with the standards for program operations provided in § 303.80 of this chapter.

(4) When assigned medical support payments are received and retained by a non-AFDC Medicaid recipient, the IV-D agency shall notify the Medicaid agency whenever it discovers that directly received medical support payments are being, or have been, retained.

(b) Upon receiving notice from the IV-A, IV-E or Medicaid agency that there has been a claim of good cause for failure to cooperate, the IV-D agency will suspend all activities to establish paternity or secure support until notified of a final determination by the appropriate agency.

(c) The IV-D agency will not undertake to establish paternity or secure support in any case for which it has received notice from the IV-A, IV-E or Medicaid agency that there has been a finding of good cause unless there has been a determination by the IV-A, IV-E or Medicaid agency, as appropriate, that support enforcement may proceed without the participation of the caretaker or other relative. If there has been such a determination, the IV-D agency will undertake to establish paternity or secure support but may not involve the caretaker or other relative in such undertaking.

(Approved by the Office of Management and Budget under control numbers 0960-0385 and 0970-0107)

[50 FR 19647, May 9, 1985, as amended at 51 FR 25526, July 15, 1986; 51 FR 37731, Oct. 24, 1986; 56 FR 8003, Feb. 26, 1991]

§ 302.32 Collection and distribution of support payments by the IV-D agency.

The State plan shall provide that:

(a) In any case in which support payments are collected for a recipient of aid under the State's title IV-A plan with respect to whom an assignment under § 232.11 is effective, such payments shall be made to the IV-D agency and shall not be paid directly to the family.

(b) The IV-D agency must inform the State's IV-A agency of the amount of the collection which represents payment on the required support obligation for the month as determined in § 302.51(a) within 10 working days of the end of the month in which the support is received by the IV-D agency responsible for final distribution. Upon being informed of this amount, the IV-A agency will determine if such amount is sufficient to make the family ineligible for an assistance payment pursuant to the State's IV-A plan (See § 232.20 of Chapter II of this title). If such amount is sufficient to make the family ineligible for an assistance payment, the IV-A agency will notify the IV-D agency and the IV-D agency will distribute the amount collected pursuant to § 302.51 of this part. The IV-D agency will notify the family that it will continue to provide services pursuant to § 302.33 of this part.

(c) If the IV-A agency determines that the amount of the collection which represents payment on the required support obligation for the month does not make the family ineligible for an assistance payment, or if a hearing is requested pursuant to § 205.10 of this title, the IV-A agency will notify the IV-D agency of such fact and the

IV-D agency will distribute such amount pursuant to § 302.51 of this part.

(d) To the extent any amount collected in a month includes payment on required support obligations for past months, that portion of such amount will be distributed by the IV-D agency pursuant to § 302.51(b)(4) and (5) of this part.

(e) Support collected in a month after any month in which the support collected makes the family ineligible for an assistance payment (pursuant to § 232.20 of this title) but prior to or in the month in which the family receives its last assistance payment, shall be used to reimburse the State for any assistance paid in such months with any excess being paid to the family. This provision will not apply when a hearing is requested pursuant to § 205.10 of this title. In these cases, when the hearing results in a determination that the family was ineligible for an assistance payment, the IV-D agency will determine the amount by which the entire support collection for a month that the family would have received pursuant to paragraph (b) of this section exceeds the amount the family actually received for a month as an assistance payment and pursuant to § 302.51. Such excess shall be paid to the family. If the family is determined to be eligible, distribution will continue to be made pursuant to § 302.51.

(f) *Timeframes for distribution of support payments.* (1) In interstate IV-D cases, amounts collected by the responding State on behalf of the initiating State must be forwarded to the initiating State within 15 calendar days

of the initial point of receipt in the responding State, in accordance with § 303.7(c)(7)(iv).

(2) Amounts collected by the IV-D agency on behalf of recipients of aid under the State's title IV-A or IV-E plan for whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective shall be distributed as follows:

(i) When the IV-D agency sends payments to the family under § 302.51(b)(1) of this part, payments to the family must be sent to the family within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in month, within 15 calendar days of the end of the month in which the support was collected. When the IV-A agency sends payments to the family under § 302.51(b)(1) of this part, the IV-D agency must forward any amount due the family under § 302.51(b)(1) to the IV-A agency within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected.

(ii) Except as specified under paragraph (f)(2)(iv) of this section, collections for the month after the month the family receives its last assistance payment and collections distributed under § 302.51(b)(3) and (5) of this part must be sent to the family within 15 calendar days of the date of initial receipt in the State of a collection for the first month of ineligibility.

(iii) Except as specified in paragraph (f)(2)(iv) of this section, collections in IV-E foster care cases under §§ 302.52(b)(2) and (4) of this part must be distributed

within 15 calendar days of the date of initial receipt in the State.

(iv) Collections as a result of Federal or State income tax refund offset paid to the family under § 302.51(b)(5) of this part, or distributed in title IV-E foster care cases under § 302.52(b)(4) of this part, must be sent to the AFDC family or IV-E agency, as appropriate, within 30 calendar days of the date of initial receipt by the IV-D agency, unless State law requires a post-offset appeal process and an appeal is filed timely, in which case the IV-D agency must send any payment to the AFDC family or IV-E agency within 15 calendar days of the date the appeal is resolved.

(3) Amounts collected on behalf of individuals receiving services under § 302.33 of this part shall be distributed as follows:

(i) Amounts collected which represent payment on the current support obligation shall be sent to the family within 15 calendar days of the date of initial receipt in the State.

(ii) Except as specified in paragraph (f)(3)(iii) of this section, if the amount collected is more than the amount required to be distributed in paragraph (f)(3)(i) of this section, the State may at its discretion either send such amounts to the family to satisfy past-due support within 15 calendar days of the date of initial receipt in the State or retain such amounts as have been assigned to satisfy assistance paid to the family which has not been reimbursed.

(iii) Collections due the family under § 302.51(b)(5) as a result of Federal or State income tax refund offset must be sent to the family within 30 calendar days of the date of receipt in the IV-D agency, except:

(A) If State law requires a post-offset appeal process and an appeal is timely filed, in which case the IV-D agency must send any payment to the family within 15 calendar days of the date the appeal is resolved; or

(B) As provided in § 303.72(h)(5) of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0385)

[40 FR 27159, June 26, 1975, as amended at 47 FR 57281, Dec. 23, 1982; 49 FR 22289, May 29, 1984; 50 FR 19648, May 9, 1985; 51 FR 37731, Oct. 24, 1986; 54 FR 32309, Aug. 4, 1989; 56 FR 8003, Feb. 26, 1991]

§ 302.33 Services to individuals not receiving AFDC or title IV-E foster care assistance.

(a) *Availability of Services.* (1) The State plan must provide that the services established under the plan shall be made available to any individual who:

(i) Files an application for the services with the IV-D agency. In an interstate case, only the initiating State may require an application under this section; or

(ii) Is a non-AFDC Medicaid recipient; or

(iii) Has been receiving IV-D services and is no longer eligible for assistance under the AFDC, IV-E foster care, and Medicaid program.

(2) The State may not require an application, other request for services or an application fee from any individual who is eligible to receive services under paragraphs (a)(1) (ii) and (iii) of this section. If an individual receiving services under paragraph (a)(1)(iii) of this section refuses services in response to a notice under paragraph (a)(4) of this section, and subsequently requests services, that individual must file an application and pay an application fee.

(3) The State may not charge fees or recover costs from any individual who is eligible to receive services under paragraph (a)(1)(ii) of this section.

(4) Whenever a family is no longer eligible for assistance under the State's AFDC, IV-E foster care, and Medicaid programs, the IV-D agency must notify the family, within five working days of the notification of ineligibility, that IV-D services will be continued unless the IV-D agency is notified to the contrary by the family. The notice must inform the family of the consequences of continuing to receive IV-D services, including the available services and the State's fees, cost recovery and distribution policies.

(5) The State must provide all appropriate IV-D services, in addition to IV-D services related to securing medical support, to all individuals who are eligible to receive services under paragraph (a)(1)(ii) of this section unless the individual notifies the State that only IV-D services related to securing medical support are wanted.

(b) *Definitions.* For purposes of this section:

Applicant's income means the disposable income available for the applicant's use under State law.

(c) *Application fee.* (1) Until October 1, 1985, the State plan may provide for an application fee to be charged each individual who applies for services under this section. If the State elects to charge a fee, the State plan shall specify either:

(i) A flat dollar amount not to exceed $25 to be charged each applicant; or

(ii) A fee schedule to be used to determine the fee to be charged each applicant. Such fee schedule will be based on each applicant's income and will be designed so as not to discourage the application for such services by those most in need of them.

(2) Beginning October 1, 1985, the State plan must provide that an application fee will be charged for each individual who applies for services under this section. Under this paragraph:

(i) The State shall collect the application fee from the individual applying for IV-D services or pay the application fee out of State funds.

(ii) The State may recover the application fee from the absent parent who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services and repay it to the applicant or itself.

(iii) State funds used to pay an application fee are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(iv) Any application fee charged must be uniformly applied on a statewide basis and must be:

(A) A flat dollar amount not to exceed $25 (or such higher or lower amount as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs); or

(B) An amount based on a fee schedule not to exceed the flat dollar amount specified in paragraph (c)(2)(iv)(A) of this section. The fee schedule must be based on the applicant's income.

(v) The State may allow the jurisdiction that collects support for the State under this part to retain any application fee collected under this section.

(3) In an interstate case, the application fee is charged by the State where the individual applies for services under this section.

(d) *Recovery of costs.* (1) The State may elect in its State plan to recover any costs incurred in excess of any fees collected to cover administrative costs under the IV-D State plan. A State which elects to recover costs shall collect on a case by case basis either excess actual or standardized costs:

(i) From the individual who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services under this section; or

(ii) From the individual who is receiving IV-D services under paragraph (a)(1) (i) or (iii) of this section, either directly or from the support collected on behalf of the individual, but only if the State has in effect a procedure for informing all individuals authorized within

the State to establish an obligation for support that the State will recover costs from the individual receiving IV-D services under paragraphs (a)(1) (i) and (iii) of this section.

(2) A State that recovers standardized costs under paragraph (d)(1) of this section shall develop a written methodology to determine standardized costs which are as close to actual costs as is possible. This methodology must be made available to any individual upon request.

(3) The IV-D agency shall not treat any amount collected from the individual as a recovery of costs under paragraph (d)(1)(i) of this section except amounts which exceed the current support owed by the individual under the obligation.

(4) If a State elects to recover costs under paragraph (d)(1)(ii) of this section, the IV-D agency may attempt to seek reimbursement from the individual who owes a support obligation for any costs paid by the individual who is receiving IV-D services and pay all amounts reimbursed to the individual who is receiving IV-D services.

(5) If a State elects to recover costs under this section, the IV-D agency must notify, consistent with the option selected, either the individual who is receiving IV-D services under paragraphs (a)(1) (i) or (iii) of this section, or the individual who owes a support obligation that such recovery will be made. In an interstate case, the IV-D agency where the case originated must notify the individual receiving IV-D services of the States that recover costs.

(6) The IV-D agency must notify the IV-D agencies in all other States if it recovers costs from the individual receiving IV-D services.

(e) *Assignment* (1) The IV-D agency may take an assignment of support rights not already assigned to the State from an individual receiving services under this section. However, an assignment by an individual under this section does not constitute an assignment as defined in § 301.1 of this chapter and may not be a condition of eligibility for services under this section.

(2) Before the recipient of IV-D services under this section makes an assignment of support rights, the IV-D agency shall inform the individual that the assignment is not a condition of eligibility for services under this section.

(Approved by the Office of Management and Budget under control numbers 0960-0253, 0960-0385, 0960-0402, and 0970-0107)

[49 FR 36772, Sept. 19, 1984, as amended at 50 FR 19648, May 9, 1985; 51 FR 37731, Oct. 24, 1986; 56 FR 8003, Feb. 26, 1991]

§ 302.34 Cooperative arrangements.

(a) The State plan shall provide that the State will enter into written agreements for cooperative arrangements with appropriate courts and law enforcement officials. Such arrangements may be entered into with a single official covering more than one court, official, or agency, if the single official has the legal authority to enter into arrangements on behalf of the courts, officials, or agencies. Such arrangements shall contain provisions

for providing courts and law enforcement officials with pertinent information needed in locating absent parents, establishing paternity and securing support, including the immediate transfer of the information obtained under § 235.70 of this title to the court or law enforcement official, to the extent that such information is relevant to the duties to be performed pursuant to the arrangement. They shall also provide for assistance to the IV-D agency in carrying out the program, and may relate to any other matters of common concern. Under matters of common concern, such arrangements may include provisions for the investigation and prosecution of fraud directly related to paternity and child and spousal support, and provisions to reimburse courts and law enforcement officials for their assistance.

(b) Cooperative arrangements entered into on or after October 1, 1989 must meet the criteria prescribed under § 303.107 of this chapter. Cooperative arrangements existing prior to October 1, 1989 must meet the criteria prescribed under § 303.107 of this chapter by October 1, 1990.

[54 FR 30222, July 19, 1989]

§ 302.35 State parent locator service.

The State plan shall provide as follows:

(a) The IV-D agency shall establish a State PLS using:

(1) All relevant sources of information and records available in the State, and in other States as appropriate; and

(2) The Federal PLS of the Department of Health and Human Services.

(b)(1) The IV-D agency shall establish a central State PLS office and may also designate additional IV-D offices within the State to submit requests to the Federal PLS.

(2) To designate more than two additional IV-D offices within the State, the IV-D agency must obtain written approval from the Office.

(c) The State PLS shall only accept requests to use the Federal PLS from:

(1) Any State or local agency or official seeking to collect child and spousal support obligations under the State plan, or medical support obligations if an agreement is in effect under § 306.2 of this chapter;

(2) A court that has authority to issue an order against an absent parent for the support and maintenance of a child, or any agency of such court;

(3) The resident parent, legal guardian, attorney, or agent of a child who is not receiving aid under title IV-A of the Act; and

(4) Authorized persons as defined in § 303.15 of this chapter if an agreement is in effect under § 303.15 to use the Federal PLS in connection with parental kidnapping or child custody cases.

[46 FR 54556, Nov. 3, 1981, as amended at 47 FR 57281, Dec. 23, 1982; 50 FR 19648, May 9, 1985]

§ 302.36 Provision of services in interstate IV-D cases.

(a) The State plan shall provide that the State will extend the full range of services available under its IV-D plan to any other State in accordance with the requirements set forth in § 303.7 of this chapter for:

(1) Locating an absent parent who is present in the State;

(2) Establishing paternity;

(3) Establishing a child support obligation;

(4) Securing compliance by an absent parent who is present in the State with a court order or an order of an administrative process established under State law for the support and maintenance of a child or children and of the spouse (or former spouse) who is living with the child or children and who is receiving services under a IV-D State plan in another State; and

(5) Carrying out any other functions required under its approved IV-D State plan.

(b) The State plan shall provide that the State will establish a central registry for interstate IV-D cases in accordance with the requirements set forth in § 303.7(a) of this chapter.

[53 FR 5256, Feb. 22, 1988]

§ 302.37 Distribution of support payments.

The State plan shall provide that, pursuant to the requirements of § 302.32 of this part, amounts collected as support will be distributed as provided in § 302.51.

[40 FR 27159, June 26, 1975, as amended at 47 FR 57281, Dec. 23, 1982]

§ 302.38 Payments to the family.

The State plan shall provide that any payment required to be made under §§ 302.32 and 302.51 of this part to a family will be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children.

§ 302.39 Standards for program operation.

The State plan shall provide that the IV-D agency will comply with the standards for program operation and the organizational and staffing requirements prescribed by Part 303 of this chapter.

[41 FR 55348, Dec. 20, 1976]

§ 302.50 Support obligations.

The State plan shall provide as follows:

(a) An assignment of support rights, as defined in § 301.1 of this chapter, constitutes an obligation owed to the State by the individual responsible for providing such support. Such obligation shall be established by:

(1) Order of a court of competent jurisdiction or of an administrative hearing process; or

(2) Except for obligations assigned under 42 CFR 433.146, other legal process as established by State laws, such as a legally enforceable and binding agreement.

(b) The amount of the obligation described in paragraph (a) of this section shall be:

(1) The amount specified in the order of a court of competent jurisdiction which covers the assigned support rights; or

(2) If there is no court order, an amount determined in writing by the IV-D agency as part of the legal process referred to in paragraph (a)(2) of this section in accordance with the requirements of § 302.56.

(c) The obligation described in paragraph (a) of this section shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(d) Any amounts which represent support payments collected from an individual responsible for providing support under the State plan shall reduce, dollar for dollar, the amount of his obligation under this section.

(e) No portion of any amounts collected which represent an assigned support obligation defined under § 301.1 of this chapter may be used to satisfy a medical support obligation unless the court or administrative order designates a specific dollar amount for medical purposes.

(Approved by the Office of Management and Budget under control number 0960-0385)

[40 FR 27159, June 26, 1975, as amended at 50 FR 19648, May 9, 1985; 51 FR 37731, Oct. 24, 1986; 56 FR 8003, Feb. 26, 1991; 56 FR 22353, May 15, 1991]

§ 302.51 Distribution of support collections.

The State plan shall provide as follows:

(a)(1) For purposes of distribution in a IV-D case, amounts collected, except as provided under paragraphs (a)(3) of this section, shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represents payment on the required support obligation for previous months.

(2) In AFDC and title IV-E foster care cases in which conversion to a monthly amount is necessary because support is ordered to be paid other than monthly, the IV-D agency may round off the converted amount to whole dollar amounts for the purpose of distribution under this section and § 302.52 of this part.

(3) Amounts collected through Federal and State income tax refund offset must be distributed as arrearages in accordance with §§ 303.72(h) and 303.102(g) of this chapter, respectively.

(4) With respect to payments made through wage or other income withholding and received by the IV-D agency on or after January 1, 1989, the date of collection for distribution purposes in all IV-D cases must be the date the wages or other income are withheld to meet the support obligation. If the employer fails to report the date of withholding, the IV-D agency must reconstruct that date by contacting the employer or comparing actual

amounts collected with the pay schedule specified in the court or administrative order.

(5) Except with respect to those collections addressed under paragraph (a) (3) and (4) of this section:

(i) Effective June 9, 1988, the date of collection for distribution purposes in all IV-D cases shall be the date on which the payment is received by the IV-D agency or the legal entity of any State or political subdivision actually making the collection, whichever is earliest; and

(ii) Effective January 1, 1989, a State may use on a statewide basis either the definition of the date of collection in paragraph (a)(5)(i) of this section or the date the payment is mailed, as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier, as the date of collection in all IV-D cases.

(b) The amounts collected as support by the IV-D agency pursuant to the State plan for children and the parents of such children who are current recipients of aid under the State's title IV-A plan and for whom an assignment under § 232.11 of this title is effective shall be distributed as follows:

(1) Of such amounts as are collected periodically which represent monthly support payments, the first $50 of any payments for a month received in that month, and the first $50 of payments for each prior month received in that month which were made by the absent parent in the month when due, shall be paid to the family. This payment may not be used in determining the amount paid, if any, to the family in paragraph (b)(3) of this section. If the

amount collected includes payment on the required support obligation for a previous month or months, the family shall only receive the first $50 of the amount which represents the required support obligation for the month in which the support was collected. If amounts are collected for one family which represent support payments from two or more absent parents, only the first $50 of the amount collected which represents the total required support obligation for the month in which the support was collected shall be paid to the family under this paragraph. No payment shall be made to a family under this paragraph for a month in which there is no child support collection.

(2) Any amount that is collected in a month which represents payment on the required support obligation for that month and is in excess of the amount paid to the family under paragraph (b)(1) of this section shall be retained by the State to reimburse, in whole or in part, the assistance payment for the month in which the support was collected or the next month. Of the amount retained by the State as reimbursement for that month's assistance payment, the IV-D agency shall determine the Federal Government's share of the amount so retained so the IV-A agency may reimburse the Federal Government to the extent of its participation in the financing of the assistance payment. From the Federal Government's share, the State IV-D agency or political subdivision of the State pursuant to the title IV-D State plan shall deduct and pay the incentive payment, if any, prescribed in § 304.12.

(3) If the amount collected is in excess of the amount required to be distributed under paragraphs

(b)(1) and (2) of this section, the family shall be paid such excess up to the difference between the assistance payment for the month in which the amount of the collection was used to redetermine eligibility for an assistance payment under the State's title IV-A plan (see § 302.32) and the court ordered amount for that month. If such court ordered amount is less than such assistance payment, no amount shall be paid to the family under this paragraph. In cases in which there is no court order, the family shall not be paid any amount under this paragraph.

(4) If the amount collected is in excess of the amounts required to be distributed under paragraphs (b)(1)-(3) of this section, any such excess shall be retained by the State as reimbursement for past assistance payments made to the family for which the State has not been reimbursed. The State may apply the amount retained to any sequence of months for which it has not yet been reimbursed. Of the amount retained by the State as reimbursement of past assistance payments, the IV-D agency shall determine the Federal Government's share of the amounts so retained so the IV-A agency may reimburse the Federal Government to the extent of its participation in the financing of the assistance payments. From the Federal Government's share, the State IV-D agency or political subdivision of the State pursuant to the title IV-D State plan shall deduct and pay the incentive payment, if any, prescribed in § 304.12. If past assistance payments are greater than the total support obligation owed, the maximum amount the State may retain as reimbursement for such assistance payments is the amount of such obligation, unless amounts are collected which represent the required support obligation for periods prior to the first

month in which the family received assistance under the State's title IV-A plan, in which case such amounts may be retained by the State to reimburse the difference between such support obligation and such assistance payments.

(5) If the amount collected is in excess of the amounts required to be distributed under paragraphs (b)(1)-(4) of this section, such excess shall be paid to the family.

(c) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to such future months. However, no such amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under section 402(a)(26) of the Act for the current month and all past months.

(d) Any amount paid under paragraph (b)(1), (3) or (5) of this section shall be identified as not being an assistance payment.

(e)(1) The amounts collected by the IV-D agency which represent specific dollar amounts designated in the support order for medical purposes that have been assigned to the State under 42 CFR 433.146 shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154.

(2) When a family ceases receiving assistance under the State's title XIX plan, the assignment of medical support rights under section 1912 of the Act terminates, except for the amount of any unpaid medical support

obligation that has accrued under such assignment. The IV-D agency shall attempt to collect any unpaid specific dollar amounts designated in the support order for medical purposes. Under this requirement, any medical support collection made by the IV-D agency under this paragraph shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154.

(f) When a family ceases receiving assistance under the State's title IV-A plan, the assignment of support rights under § 232.11 of this title terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. From this accrued amount, the IV-D agency shall attempt to collect such unpaid obligation. Under this requirement:

(1) Such collections shall be used to reimburse any amounts of past assistance which have not been reimbursed under paragraph (b)(4) of this section;

(2) Of the amount collected, the IV-D agency shall determine the Federal Government's share of the collection so the IV-A agency may reimburse the Federal Government to the extent of its participation in the financing of the assistance payments. From the Federal Government's share the State IV-D agency or political subdivision of the State pursuant to the title IV-D State plan shall deduct and pay the incentive payment, if any, prescribed in § 304.12;

(3) Only amounts collected pursuant to this paragraph which exceed the amount of unreimbursed past assistance shall be paid to the family;

(4) For those cases in which collections are authorized under § 302.33(a)(1)(iii), priority shall be given to collection of current support.

(Approved by the Office of Management and Budget under control numbers 0960-0385 and 0970-0107)

[40 FR 27159, June 26, 1975, as amended at 47 FR 37889, Aug. 27, 1982; 47 FR 57281, Dec. 23, 1982; 49 FR 35605, Sept. 10, 1984; 50 FR 19648, May 9, 1985; 50 FR 31719, Aug. 6, 1985; 51 FR 37731, Oct. 24, 1986; 53 FR 21644, June 9, 1988; 54 FR 32309, Aug. 4, 1989; 56 FR 8004, Feb. 26, 1991; 56 FR 22353, May 15, 1991]

§ 302.52 Distribution of support collected in Title IV-E foster care maintenance cases.

Effective October 1, 1984, the State plan shall provide as follows:

(a) For purposes of distribution under this section, amounts collected in foster care maintenance cases shall be treated in accordance with the provisions of § 302.51(a) of this part.

(b) The amounts collected as support by the IV-D agency under the State plan on behalf of children for whom the State is making foster care maintenance payments under the title IV-E State plan and for whom an assignment under section 471(a)(17) of the Act is effective shall be distributed as follows:

(1) Any amount that is collected in a month which represents payment on the required support obligation for that month shall be retained by the State to reimburse

itself for foster care maintenance payments. Of that amount retained by the State as reimbursement for that month's foster care maintenance payment, the State IV-D agency shall determine the Federal government's share so that the State may reimburse the Federal government to the extent of its participation in financing of the foster care maintenance payment.

(2) If the amount collected is in excess of the monthly amount of the foster care maintenance payment but not more than the monthly support obligation, the State must pay the excess to the State agency responsible for supervising the child's placement and care under section 472(a)(2) of the Act. The State agency must use the money in the manner it determines will serve the best interests of the child including:

(i) Setting aside amounts for the child's future needs; or

(ii) Making all or part of the amount available to the person responsible for meeting the child's daily needs to be used for the child's benefit.

(3) If the amount collected exceeds the amount required to be distributed under paragraphs (b)(1) and (2) of this section, but not the total unreimbursed foster care maintenance payments provided under title IV-E or unreimbursed assistance payments provided under title IV-A, the State shall retain the excess to reimburse itself for these payments. If past assistance or foster care maintenance payments are greater than the total support obligation owed, the maximum amount the State may retain as reimbursement for such payments is the amount of such obligation. If amounts are collected which represent the

required support obligation for periods prior to the first month in which the family received assistance under the State's title IV-A plan or foster care maintenance payments under the State's title IV-E plan, such amounts may be retained by the State to reimburse the difference between such support obligation and such payments. Of the amounts retained by the State, the State IV-D agency shall determine the Federal government's share of the amount so that the State may reimburse the Federal government to the extent of its participation in financing the assistance payments and foster care maintenance payments.

(4) Any balance shall be paid to the State agency responsible for supervising the child's placement and care and shall be used to serve the best interests of the child as specified in paragraph (b)(2) of this section.

(5) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to those future months. However, no amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under § 232.11 of this title and section 471(a)(17) of the Act for the current month and all past months.

(c) When a State ceases making foster care maintenance payments under the State's title IV-E State plan, the assignment of support rights under section 471(a)(17) of the Act terminates except for the amount of any unpaid support that has accrued under the assignment. The IV-D agency shall attempt to collect such unpaid support. Under this requirement, any collection made by the State

under this paragraph must be distributed in accordance with paragraph (b)(3) of this section.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19648, May 9, 1985, as amended at 50 FR 31719, Aug. 6, 1985; 51 FR 37731, Oct. 24, 1986]

§ 302.54 Notice of collection of assigned support.

(a) Until December 31, 1992, the State plan shall provide as follows:

(1) The IV-D agency, at least annually, must send a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title.

(2) The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of support collected which was paid to the family.

(b) Effective January 1, 1993, the State plan shall provide that the State has in effect procedures for issuing notices of collections as follows:

(1) The IV-D agency must provide a monthly notice of the amount of support payments collected for each month to individuals who have assigned rights to support under § 232.11 of this title, unless no collection is made in the month, the assignment is no longer in effect and there are no longer any assigned arrearages, or the conditions in paragraph (c) of this section are met.

(2) The monthly notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of current support, the amount of arrearages collected and the amount of support collected which was paid to the family.

(c)(1) The Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State:

(i) Until September 30, 1995, does not have an automated system that performs child support enforcement activities consistent with § 302.85 or has an automated system that is unable to generate monthly notices; or

(ii) Uses a toll-free automated voice response system which provides the information required under paragraph (b)(2) of this section.

(2) A quarterly notice must be provided in accordance with conditions set forth in paragraph (b)(1) of this section and such notice must contain the information set forth in paragraph (b)(2) of this section.

[57 FR 30681, July 10, 1992]

§ 302.55 Incentive payments to States and political subdivisions.

Effective October 1, 1985, in order for the State to be eligible to receive any incentive payments under § 304.12 of this chapter, the State plan shall provide that, if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan

during any period, each such subdivision shall be entitled to receive an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with § 303.52 of this chapter, taking into account the efficiency and effectiveness of the political subdivision in carrying out the activities under the State plan.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32309, Aug. 4, 1989]

§ 302.56 Guidelines for setting child support awards.

(a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State.

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

(c) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into consideration all earnings and income of the absent parent;

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and

(3) Provide for the child(ren)'s health care needs, through health insurance coverage or other means.

(d) The State must include a copy of the guidelines in its State plan.

(e) The State must review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.

(f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(h) As part of the review of a State's guidelines required under paragraph (e) of this section, a State must

consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 56 FR 22354, May 15, 1991]

§ 302.57 Procedures for the payment of support through the IV-D agency or other entity.

(a) Effective October 1, 1985, the State may have in effect and use procedures for the payment of support through the State IV-D agency or the entity designated by the State to administer the State's withholding system upon the request of either the absent parent or custodial parent, regardless of whether or not arrearages exist or withholding procedures have been instituted.

(b) If the State opts to establish procedures described in paragraph (a) of this section, the State must:

(1) Monitor all amounts paid and the dates of payments and record them on an individual payment record;

(2) Ensure prompt payment to the custodial parent; and

(3) Require the requesting parent to pay a fee for the cost of providing the service not to exceed $25 annually and not to exceed State costs.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.60 Collection of past-due support from Federal tax refunds.

The State plan shall provide that:

(a) The IV-D agency has in effect procedures necessary to obtain payment of past-due support from Federal tax refunds as set forth in section 464 of the Act, § 303.72 of this chapter, and regulations of the Internal Revenue Service at 26 CFR 304.6402-1; and

(b) The IV-D agency shall take the steps necessary to implement and use these procedures.

(Approved by the Office of Management and Budget under control number 0960-0253.)

[47 FR 7428, Feb. 19, 1982]

§ 302.65 Withholding of unemployment compensation.

The State plan shall provide that the requirements of this section are met.

(a) *Definitions.* When used in this section:

Legal process means a writ, order, summons or other similar process in the nature of a garnishment, which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order of such court or pursuant to State or local law.

State employment security agency or *SESA* means the State agency charged with the administration of the State unemployment compensation laws in accordance with title III of the Act.

Unemployment compensation means any compensation payable under State unemployment compensation law (including amounts payable in accordance with agreements under any Federal unemployment compensation law). It includes extended benefits, unemployment compensation for Federal employees, unemployment compensation for ex-servicemen, trade readjustment allowances, disaster unemployment assistance, and payments under the Redwood National Park Expansion Act.

(b) *Agreement.* The State IV-D agency shall enter into a written agreement with the SESA in its State for the purpose of withholding unemployment compensation from individuals with unmet support obligations being enforced by the IV-D agency. The IV-D agency shall agree only to a withholding program that it expects to be cost-effective and to reimbursement for the SESA's actual, incremental costs of providing services to the IV-D agency.

(c) *Functions to be performed by the IV-D agency.* The IV-D agency shall:

(1) Determine periodically from information provided by the SESA under section 508 of the Unemployment Compensation Amendments of 1976 whether individuals applying for or receiving unemployment compensation owe support obligations that are being enforced by the IV-D agency.

(2) Enforce unmet support obligations by arranging for the withholding of unemployment compensation based on a voluntary agreement with the individual who owes the support, or in appropriate cases which meet the case selection criteria established under paragraph (c)(3), through legal process pursuant to State or local law. If a voluntary agreement is obtained, the IV-D agency must give the SESA a copy of the voluntary agreement.

(3) Establish and use written criteria for selecting cases to pursue via the withholding of unemployment compensation for support purposes. These criteria must be designed to insure maximum case selection and minimal discretion in the selection process.

(4) Provide a receipt at least annually to an individual who requests a receipt for the support paid via the withholding of unemployment compensation, if receipts are not provided through other means.

(5) Maintain direct contact with the SESA in its State:

(i) By processing cases through the SESA in its own State or through IV-D agencies in other States; and

(ii) By receiving all amounts withheld by the SESA in its own State and forwarding any amounts withheld on behalf of IV-D agencies in other States to those agencies.

(6) Reimburse the administrative costs incurred by the SESA that are actual, incremental costs attributable to the process of withholding unemployment compensation for support purposes insofar as these costs have been agreed upon by the SESA and the IV-D agency.

(7) Review and document, at least annually, program operations, including case selection criteria established under paragraph (c)(3), and costs of the withholding process versus the amounts collected and, as necessary, modify procedures and renegotiate the services provided by the SESA to improve program and cost effectiveness.

[49 FR 8927, Mar. 9, 1984]

§ 302.70 Required State laws.

(a) *Required Laws.* The State plan shall provide that, in accordance with sections 454(20) and 466 of the Act, the State has in effect laws providing for and has implemented the following procedures to improve program effectiveness:

(1) Procedures for carrying out a program of withholding under which new or existing support orders are subject to the State law governing withholding so that a portion of the absent parent's wages may be withheld, in accordance with the requirements set forth in § 303.100 of this chapter;

(2) Expedited processes to establish paternity and to establish and enforce child support orders having the same force and effect as those established through full

judicial process, in accordance with the requirements set forth in § 303.101 of this chapter;

(3) Procedures for obtaining overdue support from State income tax refunds on behalf of individuals receiving IV-D services, in accordance with the requirements set forth in § 303.102 of this chapter;

(4) Procedures for the imposition of liens against the real and personal property of absent parents who owe overdue support, in accordance with the requirements set forth in § 303.103 of this chapter;

(5)(i) Procedures for the establishment of paternity for any child at least to the child's 18th birthday, including any child for whom paternity has not yet been established and any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years; and

(ii) Effective November 1, 1989, procedures under which the State is required (except in cases where the individual involved has been found under §§ 232.40 through 232.49 of this title or 42 CFR 433.147 to have good cause for refusing to cooperate or if, in accordance with § 303.5(b) of this chapter the IV-D agency has determined that it would not be in the best interest of the child to establish paternity in a case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending) to require the child and all other parties in a contested paternity case to submit to genetic tests upon the request of any such party, in accordance with §§ 303.5 (d) and (e) of this chapter.

(iii) Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that the rights and responsibilities of acknowledging paternity are explained, and ensure that due process safeguards are afforded. Such procedures must include:

(A) A hospital-based program in accordance with § 303.5(g) for the voluntary acknowledgment of paternity during the period immediately before or after the birth of a child to an unmarried mother, and a requirement that all public and private birthing hospitals participate in the hospital-based program defined in § 303.5(g)(2); and

(B) A process for voluntarily acknowledging paternity outside of hospitals.

(iv) Procedures under which the voluntary acknowledgment of paternity creates a rebuttable or, at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity;

(v) Procedures which provide that any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence; and if no objection is made, a written report of the test results is admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy;

(vi) Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity

upon genetic testing results indicating a threshold probability of the alleged father being the father of the child;

(vii) Procedures under which a voluntary acknowledgment must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity; and

(viii) Procedures requiring a default order to be entered in a paternity case upon a showing that process was served on the defendant in accordance with State law, that the defendant failed to respond to service in accordance with State procedures, and any additional showing required by State law.

(6) Procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of support, in accordance with the procedures set forth in § 303.104 of this chapter;

(7) Procedures for making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies, in accordance with § 303.105 of this chapter;

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing an application for services under § 302.33 of this part, in accordance with § 303.100(i) of this chapter;

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or

through the expedited processes required by paragraph (a)(2) of this section, is (on and after the date it is due):

(i) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(ii) Entitled as a judgment to full faith and credit in such State and in any other State; and

(iii) Not subject to retroactive modification by such State or by any other State, except as provided in § 303.106(b).

(10) Effective October 13, 1990, procedures for the review and adjustment of child support orders, in accordance with the requirements of § 303.8 of this chapter.

(b) A State need not apply a procedure required under paragraphs (a) (3), (4), (6) and (7) of this section in an individual case if the State determines that it is not appropriate using guidelines generally available to the public which take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations. The guidelines may not determine a majority of cases in which no other remedy is being used to be inappropriate.

(c) State laws enacted under this section must give States sufficient authority to comply with the requirements of §§ 303.100 through 303.105 of this chapter.

(d)(1) *Exemption.* A State may apply for an exemption from any of the requirements of paragraph (a) of this section by the submittal of a request for exemption to the appropriate Regional Office.

(2) *Basis for granting exemption.* The Secretary will grant a State, or political subdivision in the case of paragraph (a)(2) of this section, an exemption from any of the requirements of paragraph (a) of this section for a period not to exceed three years if the State demonstrates that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. Demonstration of the program's efficiency and effectiveness must be shown by actual, or, if actual is not available, estimated data pertaining to caseloads, processing times, administrative costs, and average support collections or such other actual or estimated data as the Office may request. The State must demonstrate to the satisfaction of the Secretary that the program's effectiveness would not improve by using these procedures. Disapproval of a request for exemption is not subject to appeal.

(3) *Review of exemption.* The exemption is subject to continuing review by the Secretary and may be terminated upon a change in circumstances or reduced effectiveness in the State or political subdivision, if the State cannot demonstrate that the changed circumstances continue to warrant an exemption in accordance with this section.

(4) *Request for extension.* The State must request an extension of the exemption by submitting current data in accordance with paragraph (d)(2) of this section 90 days prior to the end of the exemption period granted under paragraph (d)(2) of this section.

(5) *When an exemption is revoked or an extension is denied.* If the Secretary revokes an exemption or does not grant an extension of an exemption, the State must enact

the appropriate laws and procedures to implement the mandatory practice by the beginning of the fourth month after the end of the first regular, special, budget or other session of the State's legislature which ends after the date the exemption is revoked or the extension is denied. If no State law is necessary, the State must establish and be using the procedure by the beginning of the fourth month after the date the exemption is revoked.

(11) Procedures under which the State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 15764, Apr. 19, 1989; 56 FR 8004, Feb. 26, 1991; 56 FR 22354, May 15, 1991; 57 FR 30681, July 10, 1992; 59 FR 66249, Dec. 23, 1994]

§ 302.75 Procedures for the imposition of late payment fees on absent parents who owe overdue support.

(a) Effective September 1, 1984, the State plan may provide for imposition of late payment fees on absent parents who owe overdue support.

(b) If a State opts to impose late payment fees –

(1) The late payment fee must be uniformly applied in an amount not less than 3 percent nor more than 6 percent of overdue support.

(2) The fee shall accrue as arrearages accumulate and shall not be reduced upon partial payment of arrears. The fee may be collected only after the full amount of overdue support is paid and any requirements under State law for notice to the absent parent have been met.

(3) The collection of the fee must not directly or indirectly reduce the amount of current or overdue support paid to the individual to whom it is owed.

(4) The late payment fee must be imposed in cases where there has been an assignment under § 232.11 of this title or section 471(a)(17) of the Act or the IV-D agency is providing services under § 302.33 of this chapter.

(5) The State may allow fees collected to be retained by the jurisdiction making the collection.

(6) The State must reduce its expenditures claimed under the Child Support Enforcement program by any fees collected under this section in accordance with § 305.50 of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19650, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 56 FR 8004, Feb. 26, 1991]

§ 302.80 Medical support enforcement.

(a) The State plan may provide that the IV-D agency will secure and enforce medical support obligations under a cooperative agreement between the IV-D agency and the State Medicaid agency. Cooperative agreements

must comply with the requirements contained in Part 306 of this chapter.

(b) The State plan must provide that the IV-D agency shall secure medical support information and establish and enforce medical support obligations in accordance with the requirements contained in §§ 303.30 and 303.31 of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0420)

[50 FR 41894, Oct. 16, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32309, Aug. 4, 1989]

§ 302.85 Computerized support enforcement systems eligible for 90 percent FFP.

The State plan may provide for the establishment of a computerized support enforcement system funded at 90 percent Federal financial participation that meets the requirements in § 307.10 of this chapter.

(Approved by the Office of Management and Budget under control numbers 0960-0344 and 0960-0253)

[49 FR 33263, Aug. 22, 1984, as amended at 51 FR 37731, Oct. 24, 1986]

Part 303 – Standards for Program Operations

§ 303.0 Scope and applicability of this part.

This part prescribes:

(a) The minimum organizational and staffing requirements the State IV-D agency must meet in carrying out the IV-D program, and

(b) The standards for program operation which the IV-D agency must meet.

[41 FR 55348, Dec. 20, 1976, as amended at 54 FR 32309, Aug. 4, 1989]

§ 303.1 Definitions.

The definitions found in § 301.1 of this chapter also are applicable to this part.

§ 303.2 Establishment of cases and maintenance of case records.

(a) The IV-D agency must:

(1) Make applications for child support services readily accessible to the public;

(2) When an individual requests an application or IV-D services, provide an application to the individual on the day the individual makes a request in person or send an application to the individual within no more than 5 working days of a written or telephone request. Information describing available services, the individual's rights and responsibilities, and the State's fees, cost recovery and distribution policies must accompany all applications for services and must be provided to AFDC, Medicaid and title IV-E foster care applicants or recipients within no more than 5 working days of referral to the IV-D agency; and

(3) Accept an application as filed on the day it and the application fee are received. An application is a written document provided by the State which indicates that the individual is applying for child support enforcement

services under the State's title IV-D program and is signed by the individual applying for IV-D services.

(b) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter, the IV-D agency must, within no more than 20 calendar days of receipt of referral of a case or filing of an application for services under § 302.33, open a case by establishing a case record and, based on an assessment of the case to determine necessary action:

(1) Solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if appropriate; and

(2) If there is inadequate location information to proceed with the case, request additional information or refer the case for further location attempts, as specified in § 303.3.

(c) The case record must be supplemented with all information and documents pertaining to the case, as well as all relevant facts, dates, actions taken, contacts made and results in a case.

[54 FR 32309, Aug. 4, 1989]

§ 303.3 Location of absent parents.

(a) *Definition. Location* means information concerning the physical whereabouts of the absent parent, or the absent parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

(b) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter, the IV-D agency must attempt to locate all absent parents or sources of income and/or assets when location is necessary to take necessary action. Under this standard, the IV-D agency must:

(1) Use appropriate location sources such as the Federal PLS; interstate location networks; local officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision); relatives and friends of the absent parent; current or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; and police, parole, and probation records if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records;

(2) Establish working relationships with all appropriate agencies in order to utilize locate resources effectively;

(3) Within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources, including transmitting appropriate cases to the Federal PLS, and ensure that location information is sufficient to take the next appropriate action in a case;

(4) Refer appropriate cases to the IV-D agency of any other State, in accordance with the requirements of

§ 303.7 of this Part. The IV-D agency of such other State shall follow the procedures in paragraphs (b)(1) through (b)(3) of this section for such cases, as necessary, except that the responding State is not required to access the Federal PLS under paragraph (b)(3) of this section;

(5) Repeat location attempts in cases in which previous attempts to locate absent parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated sources but must include accessing State employment security files. Repeated attempts because of new information which may aid in location must meet the requirements of paragraph (b)(3) of this section; and

(c) The State must establish guidelines defining diligent efforts to serve process. These guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process.

[54 FR 32310, Aug. 4, 1989, as amended at 55 FR 25840, June 25, 1990; 57 FR 28110, June 24, 1992; 57 FR 31235, July 14, 1992]

§ 303.4 Establishment of support obligations.

For all cases referred to the IV-D agency or applying under § 302.33 of this chapter, the IV-D agency must:

(a) When necessary, establish paternity pursuant to the standards of § 303.5;

(b) Utilize appropriate State statutes and legal processes in establishing the support obligation pursuant to § 302.50 of this chapter.

(c) Periodically review and adjust child support orders, as appropriate, in accordance with § 303.8.

(d) Within 90 calendar days of locating the alleged father or noncustodial parent, regardless of whether paternity has been established, establish an order for support or complete service of process necessary to commence proceedings to establish a support order and, if necessary, paternity (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)).

(e) If the court or administrative authority dismisses a petition for a support order without prejudice, the IV-D agency must, at the time of dismissal, examine the reasons for dismissal and determine when it would be appropriate to seek an order in the future, and seek a support order at that time.

(f) Seek a support order based on a voluntary acknowledgment in accordance with § 302.70(a)(5)(vii).

[40 FR 27164, June 26, 1975, as amended at 50 FR 19650, May 9, 1985; 54 FR 32310, Aug. 4, 1989; 57 FR 30681, July 10, 1992; 59 FR 66249, Dec. 23, 1994]

§ 303.5 Establishment of paternity.

(a) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter in which paternity has not yet been established, the IV-D agency must, as appropriate:

(1) Provide an alleged father the opportunity to voluntarily acknowledge paternity in accordance with § 302.70(a)(5)(iii); and

(2) Attempt to establish paternity by legal process established under State law.

(i) Successful service of process; or,

(ii) The child reaching 6 months of age.

(3) In any case where an alleged father is excluded but more than one alleged father has been identified, the IV-D agency must meet the requirements set forth in paragraph (a)(1) and (2) of this section for each alleged father identified.

(b) The IV-D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the IV-D agency, it would not be in the best interests of the child to establish paternity.

(c) The IV-D agency must identify and use through competitive procurement laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father. The IV-D agency must make available a list

of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

(d)(1) Upon the request of any party in a contested paternity case, the IV-D agency, if the agency lacks the authority to order such tests, shall petition the court or administrative authority to require all parties to submit to genetic tests unless, in the case of an individual receiving aid under the State's title IV-A or XIX plan, there has been a determination of good cause for refusal to cooperate under §§ 232.40 through 232.49 of this title or 42 CFR 433.147, respectively, or if, in accordance with § 303.5(b), the IV-D agency has determined that it would not be in the best interest of the child to establish paternity in a case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending.

(2) A contested paternity case is any legal action in which the issue of paternity may be raised under State law and one party denies paternity.

(e)(1) The IV-D agency may charge any individual who is not a recipient of aid under the State's title IV-A or XIX plan a reasonable fee for performing genetic tests.

(2) Any fee charged must be reasonable so as not to discourage those in need of paternity establishment services from seeking them and may not exceed the actual costs of the genetic tests.

(3) If paternity is established and genetic tests were performed, the IV-D agency must attempt to obtain a judgment for the costs of the genetic tests from the party who denied paternity or, at State option, from each party

so long as the total amount requested does not exceed the actual costs of the genetic tests.

(4) The IV-D agency must use any amount collected under paragraphs (e)(1) and (3) of this section that exceeds the costs of performing genetic tests to reimburse any fee paid under paragraph (e)(1) of this chapter.

(f) The IV-D agency must seek entry of a default order by the court or administrative authority in a paternity case by showing that process has been served on the defendant in accordance with State law, that the defendant has failed to respond to service in accordance with State procedures, and any additional showing required by State law, in accordance with § 302.70(a)(5)(viii).

(g) *Hospital-based program.*

(1) The State must establish, in cooperation with hospitals, a hospital-based program in every public and private birthing hospital. These programs must be operational in birthing hospitals statewide no later than January 1, 1995 (unless Federal law governing the effective date gives the State additional time).

(2) During the period immediately before or after the birth of a child to an unmarried woman in the hospital, hospital-based program must, at a minimum:

(i) Provide to both the mother and alleged father, if he is present in the hospital:

(A) Written materials about paternity establishment.

(B) the forms necessary to voluntarily acknowledge paternity.

(C) a written description of the rights and responsibilities of acknowledging paternity, and

(D) the opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment;

(ii) Provide the mother and alleged father, if he is present, the opportunity to voluntarily acknowledge paternity in the hospital;

(iii) Afford due process safeguards; and

(iv) Forward completed acknowledgments or copies to the entity designated under § 303.5(g)(8).

(3) A hospital-based program need not provide services specified in paragraph (g)(2) of this section in cases where the mother or alleged father is a minor or a legal action is already pending, if the provision of such services is precluded by State law.

(4) The State must require that a voluntary acknowledgment obtained through a hospital-based program be signed by both parents, and that the parents' signatures be authenticated by a notary or witness(es).

(5) The State must provide to all public and private birthing hospitals in the State:

(i) written materials about paternity establishment.

(ii) forms necessary to voluntarily acknowledge paternity, and

(iii) copies of a written description of the rights and responsibilities of acknowledging paternity.

(6) The State must provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity, as necessary to operate the hospital-based program.

(7) The State must assess each birthing hospital's program on at least an annual basis.

(8) The State must designate an entity to which hospital-based programs must forward completed voluntary acknowledgments or copies in accordance with § 303.5(g)(2)(iv). Under State procedures, this entity must be responsible for promptly recording identifying information about the acknowledgments with a statewide database, and the IV-D agency must have timely access to whatever identifying information and documentation it needs to determine in accordance with § 303.5(h) if an acknowledgment has been recorded and to seek a support order on the basis of a recorded acknowledgment in accordance with § 303.4(f).

(h) In IV-D cases needing paternity establishment, the IV-D agency must determine if identifying information about a voluntary acknowledgment has been recorded in the statewide database in accordance with § 303.5(g)(8).

[40 FR 27164, June 26, 1975, as amended at 50 FR 19650, May 9, 1985; 54 FR 32310, Aug. 4, 1989; 56 FR 22354, May 15, 1991; 59 FR 66249, Dec. 23, 1994]

§ 303.6 Enforcement of support obligations.

For all cases referred to the IV-D agency or applying for services under § 302.33 in which the obligation to

support and the amount of the obligation have been established, the IV-D agency must maintain and use an effective system for:

(a) Monitoring compliance with the support obligation;

(b) Identifying on the date the parent fails to make payments in an amount equal to the support payable for one month, or on an earlier date in accordance with State law, those cases in which there is a failure to comply with the support obligation; and

(c) Enforcing the obligation by:

(1) Initiating income withholding, in accordance with § 303.100;

(2) Taking any appropriate enforcement action (except income withholding and Federal and State income tax refund offset) unless service of process is necessary, within no more than 30 calendar days of identifying a delinquency or other support-related non-compliance with the order or the location of the absent parent, whichever occurs later. If service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts to serve process must be documented in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), and enforcement action taken if process is served, within no later than 60 calendar days of identifying a delinquency or other support-related non-compliance with the order, or the location of the absent parent, whichever occurs later;

(3) Submitting once a year all cases which meet the certification requirements under § 303.102 of this part and State guidelines developed under § 302.70(b) of this title for State income tax refund offset, and which meet the certification requirements under § 303.72 of this part for Federal income tax refund offset; and

(4) In cases in which enforcement attempts have been unsuccessful, at the time an attempt to enforce fails, examining the reason the enforcement attempt failed and determining when it would be appropriate to take an enforcement action in the future, and taking an enforcement action in accordance with the requirements of this section at that time.

[54 FR 32310, Aug. 4, 1989, as amended at 55 FR 25840, June 25, 1990]

§ 303.7 Provision of services in interstate IV-D cases.

(a) *Interstate central registry.*

(1) The State IV-D agency must establish an interstate central registry responsible for receiving, distributing and responding to inquiries on all incoming interstate IV-D cases, including URESA petitions and requests for wage withholding in IV-D cases, and at the option of the State, intrastate IV-D cases no later than August 22, 1988.

(2) Within 10 working days of receipt of an interstate IV-D case from an initiating State, the central registry must:

(i) Ensure that the documentation submitted with the case has been reviewed to determine completeness;

(ii) Forward the case for necessary action either to the State PLS for location services or to the appropriate agency for processing;

(iii) Acknowledge receipt of the case and ensure that any missing documentation has been requested from the initiating State; and

(iv) Inform the IV-D agency in the initiating State where the case was sent for action.

(3) If the documentation received with a case is inadequate and cannot be remedied by the central registry without the assistance of the initiating State, the central registry must forward the case for any action which can be taken pending necessary action by the initiating State.

(4) The central registry must respond to inquiries from other States within 5 working days of receipt of the request for a case status review.

(b) *Initiating State IV-D agency responsibilities.* The IV-D agency must:

(1) If the State has a long-arm statute which allows paternity establishment, use the authority to establish paternity whenever appropriate.

(2) Except as provided in paragraph (b)(1) of this section, within 20 calendar days of determining that the absent parent is in another State, and, if appropriate, receipt of any necessary information needed to process the case, refer any interstate IV-D case to the responding State's interstate central registry for action, including URESA petitions and requests for location, document verification, administrative reviews in Federal income tax refund offset cases, wage withholding, and State income tax refund offset in IV-D cases.

(3) Provide the IV-D agency in the responding State sufficient, accurate information to act on the case by submitting with each case any necessary documentation and either the Interstate Child Support Enforcement Transmittal Form or the URESA Action Request Forms package, as appropriate. The State may use computer-generated replicas in the same format and containing the same information in place of the forms.

(4) Provide the IV-D agency or central registry in the responding State with any requested additional information or notify the responding State when the information will be provided within 30 calendar days of receipt of the request for information by submitting an updated form, or a computer-generated replica in the same format and containing the same information, and any necessary additional documentation.

(5) Notify the IV-D agency in the responding State within 10 working days of receipt of new information on a case by submitting an updated form and any necessary additional documentation.

(c) *Responding State IV-D agency responsibilities.* (1) The IV-D agency must establish and use procedures for managing its interstate IV-D caseload which ensure provision of necessary services and include maintenance of case records in accordance with § 303.2 of this part.

(2) The IV-D agency must periodically review program performance on interstate IV-D cases to evaluate the effectiveness of the procedures established under this section.

(3) The State must ensure that the organizational structure and staff of the IV-D agency are adequate to provide for the administration or supervision of the following support enforcement functions specified in § 303.20(c) of this part for its interstate IV-D caseload: Intake; establishment of paternity and the legal obligation to support; location; financial assessment; establishment of the amount of child support; collection; monitoring; enforcement and investigation.

(4) Within 75 calendar days of receipt of an Interstate Child Support Enforcement Transmittal Form, a URESA Action Request Form or other alternative State form and documentation from its interstate central registry, the IV-D agency must:

(i) Provide location services in accordance with § 303.3 of this part if the request is for location services or the form or documentation does not include adequate location information on the absent parent;

(ii) If unable to proceed with the case because of inadequate documentation, notify the IV-D agency in the initiating State of the necessary additions or corrections to the form or documentation.

(iii) If the documentation received with a case is inadequate and cannot be remedied by the responding IV-D agency without the assistance of the initiating State, the IV-D agency must process the interstate IV-D case to the extent possible pending necessary action by the initiating State.

(5) Within 10 working days of locating the absent parent in a different jurisdiction within the State, the IV-D

agency must forward the form and documentation to the appropriate jurisdiction and notify the initiating State and central registry of its action.

(6) Within 10 working days of locating the absent parent in a different State the IV-D agency must –

(i) Return the form and documentation, including the new location, to the initiating State, or, if directed by the initiating State, forward the form and documentation to the central registry in the State where the absent parent has been located; and

(ii) Notify the central registry where the case has been sent.

(7) The IV-D agency must provide any necessary services as it would in intrastate IV-D cases by:

(i) Establishing paternity in accordance with § 303.5 of this part and attempting to obtain a judgment for costs should paternity be established;

(ii) Establishing a child support obligation in accordance with §§ 303.4 and 303.101 of this part and § 303.31 of this chapter;

(iii) Processing and enforcing orders referred by another State, whether pursuant to the Uniform Reciprocal Enforcement of Support Act or other legal processes, using appropriate remedies applied in its own cases in accordance with §§ 303.6 and 303.100 through 303.105 of this part and § 303.31 of this chapter; and

(iv) Collecting and monitoring any support payments from the absent parent and forwarding payments

to the location specified by the IV-D agency in the initiating State no later than 15 calendar days from the date of initial receipt in the responding State. The IV-D agency must include sufficient information to identify the case, indicate the date of collection as defined under § 302.51(a) of this chapter or that the payments were made through State income tax refund offset, and include the responding State's identifying code as defined in the Federal Information Processing Standards Publication (FIPS) issued by the National Bureau of Standards or the Worldwide Geographic Location Codes issued by the General Services Administration.

(8) The IV-D agency must provide timely notice to the IV-D agency in the initiating State in advance of any formal hearings which may result in establishment or modification of an order.

(9) The IV-D agency must notify the IV-D agency in the initiating State within 10 working days of receipt of new information on a case by submitting an updated form or a computer-generated replica in the same format and containing the same information.

(10) The IV-D agency must notify the interstate central registry in the responding State when a case is closed.

(d) *Payment and recovery of costs in interstate IV-D cases.* (1) Except as provided in paragraphs (2) and (4), the IV-D agency in the responding State must pay the costs it incurs in processing interstate IV-D cases.

(2) The IV-D agency in the initiating State must pay for the costs of genetic testing in actions to establish paternity.

(3) If paternity is established in the responding State, the IV-D agency in the responding State must attempt to obtain a judgment for the costs of genetic testing from the party who denied paternity, or, at State option, from each party so long as the total amount requested does not exceed the actual costs of the genetic tests, and, if costs of genetic testing are recovered, must reimburse the initiating State.

(4) Each IV-D agency may recover its costs of providing services in interstate non-AFDC cases in accordance with § 302.33(d) of this chapter.

(5) The IV-D agency in the responding State must identify any fees or costs deducted from support payments when forwarding payments to the IV-D agency in the initiating State in accordance with § 303.7(c)(7)(iv) of this section.

(Approved by the Office of Management and Budget under control number 0970-0085)

[53 FR 5257, Feb. 22, 1988, as amended at 53 FR 18987, May 26, 1988; 53 FR 21645, June 9, 1988; 53 FR 27518, July 21, 1988; 54 FR 32311, Aug. 4, 1989; 55 FR 25840, June 25, 1990; 56 FR 22355, May 15, 1991; 57 FR 30681, July 10, 1992]

§ 303.8 Review and adjustment of child support orders.

(a) *Definitions.* For purposes of this section:

(1) *Adjustment* applies only to the child support provisions of the order, and means:

(i) An upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards; and/or

(ii) Provision for the child's health care needs, through health insurance coverage or other means.

(2) *Parent* includes any custodial parent or non-custodial parent (or for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

(3) *Review* means an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine:

(i) The appropriate support award amount; and

(ii) The need to provide for the child's health care needs in the order through health insurance coverage or other means.

(b) *Plan for review and adjustment.* (1) Effective on October 13, 1990, the State must have a written and publicly available plan indicating how and when child support orders in effect in the State will be periodically reviewed and adjusted.

(2) During the period from October 13, 1990 through October 12, 1993, the State must, for orders being enforced under this chapter:

(i) Determine whether such orders should be reviewed, using the plan specified in paragraph (b)(1) of this section;

(ii) Initiate a review, in accordance with the plan, at the request of either parent subject to the order or of a IV-D agency.

(iii) Notify each parent subject to a child support order of any review of the order at least 30 calendar days before commencement of the review;

(iv) Adjust the order when the review determines that there should be a change in the child support award amount, or that health insurance should be required, as indicated by the review in accordance with the State's guidelines for support described in § 302.56 of this chapter.

(v) Following any review, notify each parent subject to a child support order in effect in the State, of:

(A) Any adjustment or a determination that there should be no change in the order; and

(B) Each parent's right to initiate proceedings to challenge the adjustment or determination, either through pre-decision review, appeal, or administrative review, within at least 30 calendar days after the date of the notice.

[57 FR 30681. July 10, 1992]

§ 303.10 Procedures for case assessment and prioritization.

(a) The IV-D agency may implement a case assessment and prioritization system Statewide or in a particular political subdivision of the State to manage its caseload. If a IV-D agency implements a case assessment and prioritization system, the IV-D agency must continue to meet the timeframes and case processing standards contained in this Part.

(b) In implementing a case assessment and prioritization system, the IV-D agency must:

(1) Develop written procedures for the evaluation and prioritization of cases upon receipt and upon becoming aware of changes in case circumstances;

(2) Include all of its cases in the system.

(3) Ensure that no service required to be provided under the IV-D State plan will be systematically excluded by the prioritization system, including locating the absent parent, establishing paternity, and establishing and enforcing support obligations.

(4) Notify all applicants for services that the information they provide, either initially or subsequently, may affect the relative priority given their cases.

(5) Prioritize cases after reviewing all intake information for accuracy and completeness and, if review indicates that additional information is needed, prioritize only after attempting to verify or secure the information in accordance with § 303.2.

(6) Establish a mechanism for the periodic review of low priority cases in accordance with the standards set forth in part 303, and for notifying the custodial parent in these cases that new information may result in a higher priority for the case.

(Approved by the Office of Management and Budget under control number 0960-0394)

[49 FR 36777, Sept. 19, 1984; as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32311, Aug. 4, 1989; 56 FR 8004, Feb. 26, 1991]

§ 303.11 Case closure criteria.

(a) The IV-D agency shall establish a system for case closure.

(b) In order to be eligible for closure, the case must meet at least one of the following criteria:

(1) In the case of a child who has reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law;

(2) In the case of a child who has not reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law;

(3) The absent parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(4) Paternity cannot be established because:

(i) The child is at least 18 years old and action to establish paternity is barred by a statute of limitations which meets the requirements of § 302.70(a)(5) of this chapter;

(ii) A genetic test or a court or administrative process has excluded the putative father and no other putative father can be identified; or

(iii) In accordance with § 303.5(b) of this part, the IV-D agency has determined that it would not be in the best interests of the child to establish paternity in a case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending;

(5) The absent parent's location is unknown, and the State has made regular attempts using multiple sources to locate the absent parent over a three-year period, all of which have been unsuccessful;

(6) The absent parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically-verified total and permanent disability with no evidence of support potential. The State must also determine that no income or assets are available to the absent parent which could be levied or attached for support;

(7) The absent parent is a citizen of, and lives in, a foreign country, does not work for the Federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets; and the State has been unable to establish reciprocity with the country;

(8) The IV-D agency has provided location-only services as requested under § 302.35(c)(3) of this chapter;

(9) The non-AFDC custodial parent requests closure of a case and there is no assignment to the State of medical support under 42 CFR 433.146 or of arrearages which accrued under a support order;

(10) There has been a finding of good cause as set forth at § 302.31(c) and either §§ 232.40 through 232.49 of this chapter or 42 CFR 433.147 and the State or local IV-A, IV-E, or Medicaid agency has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative;

(11) In a non-AFDC case receiving services under § 302.33(a)(1) (i) or (iii), the IV-D agency is unable to contact the custodial parent within a 30 calendar day period despite attempts by both phone and at least one certified letter; or

(12) In a non-AFDC case receiving services under § 302.33(a)(1) (i) or (iii), the IV-D agency documents the circumstances of the custodial parent's noncooperation and an action by the custodial parent is essential for the next step in providing IV-D services.

(c) In cases meeting the criteria in paragraphs (b) (1) through (7) and (11) and (12) of this section, the State must notify the custodial parent in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the custodial parent supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order or, in the

instance of paragraph (b)(11) of this section, if contact is reestablished with the custodial parent. If the case is closed, the custodial parent may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order.

(d) The IV-D agency must retain all records for cases closed pursuant to this section for a minimum of three years, in accordance with 45 CFR Part 74, Subpart D.

[54 FR 32311, Aug. 4, 1989, as amended at 56 FR 8004, Feb. 26, 1991]

§ 303.15 Agreements to use the Federal Parent Locator Service (PLS) in parental kidnapping and child custody cases.

(a) *Definitions.* The following definitions apply to this section:

(1) *Authorized person* means the following:

(i) Any agent or attorney of any State having an agreement under this section, who has the duty or authority under the laws of the State to enforce a child custody determination.

(ii) Any court having jurisdiction to make or enforce a child custody determination, or any agent of the court.

(iii) Any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring

a prosecution with respect to the unlawful taking or restraint of a child.

(2) *Custody determination* means a judgment, decree, or other order of a court providing for custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications.

(b) If the State enters into an agreement with the Office that meets the requirements of section 463 of the Act and this section of the regulations, the State IV-D agency may request information from the Federal PLS for the purpose of:

(1) Enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) Making or enforcing a child custody determination.

(c) An agreement under section 463 of the Act must contain the following provisions:

(1) The Director will provide the State IV-D agency with the most recent home address and place of employment of an absent parent or child if the information is requested for the purposes specified in paragraph (b) of this section.

(2) The State shall make requests for information under the agreement only for the purposes specified in paragraph (b) of this section.

(3) The State shall make requests to the Federal PLS through the State PLS established under § 302.35 of this chapter.

(4) The State shall submit requests in the standard format and exchange media normally available to or used by the State PLS.

(5) The State shall identify requests in a manner prescribed by the Office in instructions so that requests can be distinguished from other types of requests submitted to the Federal PLS.

(6) The State shall impose, collect and account for fees to offset the costs to the State and the Office incurred in processing requests.

(7) The State shall periodically transmit the fees collected to cover the costs to the Federal PLS of processing requests. Fees shall be transmitted in the amount and in the manner prescribed by the Office in instructions.

(8) The State shall adopt policies and procedures to ensure that information shall be used and disclosed solely for the purposes specified in paragraph (b) of this section. Under this requirement, the State shall:

(i) Restrict access to the information to authorized persons whose duties or responsibilities require access in connection with child custody and parental kidnapping cases;

(ii) Store the information during nonduty hours, or when not in use, in a locked container within a secure area that is safe from access by unauthorized persons;

(iii) Process the information under the immediate supervision and control of authorized personnel, in a manner which will protect the confidentiality of the information, and in such a way that unauthorized persons

cannot retrieve the information by computer, remote terminal, or other means;

(iv) Brief all employees who will have access to the data on security procedures and instructions;

(v) Send the information directly to the requestor and make no other use of the information;

(vi) After the information is sent to the requestor, destroy any confidential records and information related to the request.

(d)(1) An agreement under section 463 of the Act must be signed by the Governor of the State or the Governor's designee.

(2) The agreement must also be signed by the Attorney General of the State who must certify that the signing State official has the authority under State law to commit the State to the agreement.

[46 FR 54557, Nov. 3, 1981]

§ 303.20 Minimum organizational and staffing requirements.

(a) The organizational structure of the IV-D agency (See § 302.12) provides for administration or supervision of all the functions for which it is responsible under the State plan, is appropriate to the size and scope of the program in the State, and contains clearly established lines for administrative and supervisory authority.

(b) There is an organizational structure and sufficient staff to fulfill the following required State level functions:

(1) The establishment and administration of the State plan.

(2) Formal evaluation of the quality, efficiency, effectiveness, and scope of services provided under the plan.

(3) Coordination of activities pursuant to, and assurance of compliance with, the requirements of the State's Reciprocal Enforcement of Support Act for cases pursuant to a State plan.

(4) Requests to the DHHS Office of Child Support Enforcement for use of the Federal Parent Locator Service, the U.S. District Courts, and IRS collection procedures.

(5) Preparation and submission of reports required by the Office.

(6) Financial control of the operation of the plan.

(7) Operation of the State Parent Locator Service as required under § 302.35 of this chapter.

(c) There is an organizational structure and sufficient resources at the State and local level to meet the performance and time standards contained in this part and to provide for the administration or supervision of the following support enforcement functions:

(1) *Intake.* Activities associated with initial support case opening.

(2) *Establishing the legal obligation to support.* Activities related to determining the absent parent's legal obligation to support his or her dependent children, including paternity determination when necessary.

(3) *Locate.* Activities associated with locating an absent parent.

(4) *Financial assessment.* Activities related to determining an absent parent's ability to provide support.

(5) *Establishment of the amount of support.* Activities related to determining an absent parent's child support obligation, including methods and terms of payment.

(6) *Collection.* Activities related to monitoring payment activities and processing cash flow.

(7) *Enforcement.* Activities to enforce collection of support, including income withholding and other available enforcement techniques.

(8) *Investigation.* Activities related to investigation necessary to accomplish the functions of this paragraph.

(d) The functions referred to in paragraph (b)(1), (2) and (6) of this section may not be delegated by the IV-D agency. The functions referred to in paragraph (b)(5) of this section may be delegated to the extent necessary to report on activities delegated by the IV-D agency.

(e) No functions under the State plan may be delegated by the IV-D agency if such functions are to be performed by caseworkers who are also performing the assistance payments or social services functions under title IV-A or XX of the Act.

In the case of a sparsely populated geographic area, upon justification by the IV-D agency documenting a lack of administrative feasibility in not utilizing staff of the IV-A agency, the Office may approve alternate arrangements that include sufficient reporting and cost allocation

methods that will assure compliance with Federal requirements and proper claims for Federal financial participation. Under this provision:

(1) *Caseworker* means any person who has decision-making authority over individual cases on a day-to-day basis and includes, but is not limited to such designations as intake worker, eligibility technician, caseworker, and social worker.

(2) The *assistance payments function* means activities related to determination of eligibility for, and amount of financial assistance under the approved State plan under title I, IV-A, X, XIV, or XVI, State Supplemental income payments under title XVI of the Act, and State or local General Assistance programs. It includes the complete process of determining initial and continuing eligibility for financial and medical assistance and commodities distribution or food stamps.

(3) The *social services function* means those activities included in the approved State plan and carried out pursuant to Parts 220, 222 and 226 of this title or carried out pursuant to title XX of the Act. It includes determination of eligibility for, and delivery of services to, families and individuals under the approved State plan or under title XX of the Act.

(f) There are the following types of staff in sufficient numbers to achieve the standards for an effective program prescribed in this part:

(1) Attorneys or prosecutors to represent the agency in court or administrative proceedings with respect to the

establishment and enforcement of orders of paternity and support, and

(2) Other personnel such as legal, interviewer, investigative, accounting, clerical, and other supportive staff.

(g) If it is determined as a result of an audit conducted under Part 305 of this chapter that a State is not in substantial compliance with the requirements of title IV-D of the Act, the Secretary will evaluate whether inadequate resources was a major contributing factor and, if necessary, may set resource standards for the State.

[40 FR 27164, June 26, 1975, as amended at 47 FR 57282, Dec. 23, 1982; 54 FR 32312, Aug. 4, 1989]

§ 303.21 Safeguarding information.

(a) Under State statute which imposes legal sanctions, the use or disclosure of information concerning applicants or recipients of support enforcement services is limited to purposes directly connected with:

(1) The administration of the plan or program approved under parts A, B, C or D of title IV or under titles II, X, XIV, XVI, XIX or XX or the supplemental security income program established under title XVI;

(2) Any investigations, prosecution or criminal or civil proceeding conducted in connection with the administration of any such plan or program; and

(3) The administration of any other Federal or Federally assisted program which provides assistance, in

cash or in kind, or services, directly to individuals on the basis of need.

(b) These safeguards shall also prohibit disclosure to any committee or legislative body (Federal, State, or local) of any information that identifies by name or address any such applicant or recipient.

[47 FR 24719, June 8, 1982]

§ 303.30 Securing medical support information.

(a) If the IV-A or IV-E agency does not provide the information specified in this paragraph to the Medicaid agency and if the information is available or can be obtained in a IV-D case for which an assignment as defined under § 301.1 of this chapter is in effect, the IV-D agency shall obtain the following information on the case:

(1) AFDC case number, title IV-E foster care case number, Medicaid number or the individual's social security number;

(2) Name of absent parent;

(3) Social security number of absent parent;

(4) Name and social security number of child(ren);

(5) Home address of absent parent;

(6) Name and address of absent parent's place of employment;

(7) Whether the absent parent has a health insurance policy and, if so, the policy name(s) and number(s) and name(s) of person(s) covered.

(b) When an individual is eligible for services under § 302.33 of this chapter, the IV-D agency shall inform the individual that medical support enforcement services are available and shall secure the information specified in paragraph (a) of this section:

(1) If the individual is a Medicaid applicant or recipient; or

(2) With the consent of the individual, if the individual is not a Medicaid applicant or recipient.

(c) The IV-D agency shall provide the information obtained under paragraphs (a) and (b)(1) of this section to the Medicaid agency in a timely manner by the most efficient and cost-effective means available, using manual or automated systems.

(Approved by the Office of Management and Budget under control numbers 0960-0420 and 0970-0107)

[50 FR 41895, Oct. 15, 1985, as amended at 51 FR 37732, Oct. 24, 1986. Redesignated at 54 FR 32312, Aug. 4, 1989; 56 FR 8004, Feb. 26, 1991]

§ 303.31 Securing and enforcing medical support obligations.

(a) For purposes of this section:

(1) Health insurance is considered reasonable in cost if it is employment-related or other group health insurance, regardless of service delivery mechanism.

(2) Health insurance includes fee for service, health maintenance organization, preferred provider organization, and other types of coverage under which medical

services could be provided to the dependent child(ren) of an absent parent.

(b) With respect to cases for which there is an assignment as defined in § 301.1 of this chapter in effect, the IV-D agency shall:

(1) Unless the custodial parent and child(ren) have satisfactory health insurance other than Medicaid, petition the court or administrative authority to include health insurance that is available to the absent parent at reasonable cost in new or modified court or administrative orders for support.

(2) Petition the court or administrative authority to include medical support as required under paragraph (b)(1) of this section whether or not –

(i) Health insurance at reasonable cost is actually available to the absent parent at the time the order is entered; or

(ii) Modification of current coverage to include the child(ren) in question is immediately possible.

(3) Establish written criteria to identify cases not included under paragraphs (b)(1) and (b)(2) of this section where there is a high potential for obtaining medical support based on –

(i) Evidence that health insurance may be available to the absent parent at a reasonable cost, and

(ii) Facts, as defined by State law, regulation, procedure, or other directive, which are sufficient to warrant modification of the existing support order to include health insurance coverage for a dependent child(ren).

(4) Petition the court or administrative authority to modify support orders for cases identified in paragraph (b)(3) of this section to include medical support in the form of health insurance coverage.

(5) Provide the custodial parent with information pertaining to the health insurance policy which has been secured for the dependent child(ren) pursuant to an order obtained under this section.

(6) Inform the Medicaid agency when a new or modified court or administrative order for child support includes medical support and provide the information referred to in § 306.50(a) of this part to the Medicaid agency when the information is available.

(7) If health insurance is available to the absent parent at reasonable cost and has not been obtained at the time the order is entered, take steps to enforce the health insurance coverage required by the support order and provide the Medicaid agency with the information referred to in § 306.50(a) of this part.

(8) Periodically communicate with the Medicaid agency to determine if there have been lapses in health insurance coverage for Medicaid applicants and recipients.

(9) Request employers and other groups offering health insurance coverage that is being enforced by the IV-D agency to notify the IV-D agency of lapses in coverage.

(c) The IV-D agency shall inform an individual who is eligible for services under § 302.33 of this chapter that medical support enforcement services are available and

shall provide the services specified in paragraph (b) of this section:

(1) If an individual eligible for services under § 302.33 is a Medicaid recipient; or

(2) With the consent of the individual who is eligible for services under § 302.33 and is not a Medicaid recipient, except that health insurance information shall not be transmitted to the Medicaid agency.

(Approved by the Office of Management and Budget under control numbers 0960-0420 and 0970-0107)

[50 FR 41895, Oct. 15, 1985, as amended at 51 FR 37732, Oct. 24, 1986; 53 FR 36021, Sept. 16, 1988. Redesignated at 54 FR 32312, Aug. 4, 1989; 56 FR 8004, Feb. 26, 1991]

§ 303.52 Pass-through of incentives to political subdivisions.

The State must calculate and promptly pay incentives to political subdivisions as follows:

(a) The State IV-D agency must develop a standard methodology for passing through an appropriate share of its incentive payment to those political subdivisions of the State that participate in the costs of the program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by those political subdivisions. In order to reward efficiency and effectiveness, the methodology also may provide for payment of incentives to other political subdivisions of the State that administer the program.

(b) To ensure that the standard methodology developed by the State reflects local participation, the State IV-D agency must submit a draft methodology to participating political subdivisions for review and comment or use the rulemaking process available under State law to receive local input.

[54 FR 32312, Aug. 4, 1989]

§ 303.69 Requests by agents or attorneys of the United States for information from the Federal Parent Locator Service (PLS).

(a) Agents or attorneys of the United States may request information directly from the Federal PLS in connection with a parental kidnapping or child custody case. (See § 303.15(a) of this part for a definition of persons authorized to request the information.)

(b) All requests under this section shall be made in the manner and form prescribed by the Office.

(c) All requests under this section shall contain the information specified in § 303.70(c) of this part.

(d) All requests under this section shall be accompanied by a statement, signed by the agent or attorney of the United States, attesting to the following:

(1) The request is being made solely to locate an individual in connection with a parental kidnapping or child custody case.

(2) Any information obtained through the Federal PLS shall be treated as confidential, shall be used solely

for the purpose for which it was obtained and shall be safeguarded.

(e) A fee may be charged to cover the costs of processing requests for information. A separate fee may be charged to cover costs of searching for a social security number before processing a request for location information.

(Approved by the Office of Management and Budget under control number 0960-0258)

[48 FR 38645, Aug. 25, 1983, as amended at 51 FR 37731, Oct. 24, 1986]

§ 303.70 Requests by the State Parent Locator Service (SPLS) for information from the Federal Parent Locator Service (FPLS).

(a) Only the central State PLS office, and any additional IV-D offices designated under § 302.35(b), may submit requests for information to the Federal PLS.

(b) All requests shall be made in the manner and form prescribed by the Office.

(c) All requests shall contain the following information:

(1) The absent parent's name;

(2) The absent parent's social security number (SSN). If the SSN is unknown, the IV-D agency must make every reasonable effort to ascertain the individual's SSN before submitting the request to the Federal PLS;

(3) Whether the individual is or has been a member of the armed services, if known;

(4) Whether the individual is receiving, or has received, and Federal compensation or benefits, if known; and

(5) Any other information prescribed by the Office.

(d) All requests shall be accompanied by a statement, signed by the director of the IV-D agency or his or her designee, attesting to the following:

(1) The request is being made solely to locate an individual for the purpose of establishing paternity or securing support or in connection will a parental kidnapping or child custody case.

(2) Any information obtained through the Federal PLS shall be treated as confidential and shall be safeguarded under the requirements of § 303.21 of this chapter and instructions issued by the Office.

(e)(1) The IV-D agency shall pay the fees required under:

(i) Section 453(e)(2) of the Act in IV-D cases in which there is no assignment of support rights to the State under § 301.1 of this chapter and in non-IV-D locate-only cases in which the location of an absent parent is the only service requested; and

(ii) Section 454(17) of the Act in parental kidnapping and child custody cases.

(2)(i) The IV-D agency may charge an individual requesting information, or pay without charging the individual, the fee required under sections 453(e)(2) and 454(17) of the Act.

(ii) The State may recover the fee required under section 453(e)(2) of the Act from the absent parent who owes a support obligation to a family on whose behalf the IV-D agency is providing services and repay it to the individual requesting information or itself.

(iii) State funds used to pay the fee under section 453(e)(2) of the Act are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(3) The fees required under sections 453(e)(2) and 454(17) of the Act shall be reasonable and as close to actual costs as possible so as not to discourage use of the FPLS by authorized individuals.

(4)(i) For costs of processing requests for information under sections 453(e)(2) and 454(17) of the Act, the Federal government will charge the IV-D agency periodically. A fee will be charged for submitting a case to the FPLS for location information.

(ii) If a State fails to pay the appropriate fees charged by the Office under this section, the services provided by the FPLS in cases subject to the fees may be suspended until payment is received.

(iii) Fees shall be transmitted in the amount and manner prescribed by the Office in instructions.

(Approved by the Office of Management and Budget under control number 0960-0165)

[46 FR 54557, Nov. 3, 1981, as amended at 47 FR 24719, June 8, 1982; 47 FR 57282, Dec. 23, 1982; 51 FR 37731, Oct. 24, 1986; 57 FR 28110, June 24, 1992]

§ 303.71 Requests for full collection services by the Secretary of the Treasury.

(a) *Definition. State collection mechanisms* means a comprehensive set of written procedures developed and used to maximize effective collection action within the State.

(b) *Families eligible.* Subject to the criteria and procedures in this section, the IV-D agency may request the Secretary to certify the amount of a child support obligation to the Secretary of the Treasury for collection under section 6305 of the Internal Revenue Code of 1954. Requests may be made on behalf of families who make assignments as defined in § 301.1 of this chapter and on behalf of families receiving services under § 302.33.

(c) *Cases eligible.* For a case to be eligible for certification to the Secretary of the Treasury:

(1) There shall be a court or administrative order for support;

(2) The amount to be collected under the support order shall be at least $750 in arrears;

(3) At least six months shall have elapsed since the last request for referral of the case to the Secretary of the Treasury;

(4) The IV-D agency, the client, or the client's representative shall have made reasonable efforts to collect the

support through the State's own collection mechanisms. The agency need not repeat actions taken by the client or client's representative that the agency determines to be comparable to the State's collection mechanisms.

(5) Only the State that has taken an assignment as defined in § 301.1 of this chapter or an application or referral under § 302.33 of this chapter may request IRS collection services on behalf of a given case.

(d) *Procedures for submitting requests.*

(1) The IV-D agency shall submit requests for certification to the regional office in the manner and form prescribed by the Office.

(2) The Director of the State IV-D agency (or designee) shall sign requests for collection by the Secretary of the Treasury.

(e) *Criteria for acceptable requests.* The IV-D agency shall ensure that each request contains:

(1) Sufficient information to identify the debtor, including:

(i) The individual's name;

(ii) The individual's social security number;

(iii) The individual's address and place of employment, including the source of this information and the date it was last verified.

(2) A copy of all court or administrative orders for support;

(3)(i) The amount owed under the support orders;

(ii) A statement of whether the amount is in lieu of, or in addition to, amounts previously referred to IRS for collection;

(4)(i) A statement that the agency, the client, or the client's representative has made reasonable efforts to collect the amount owed using the State's own collection mechanisms or mechanisms that are comparable;

(ii) A description of the actions taken, why they failed, and why further State action would be unproductive;

(5) The dates of any previous requests for referral of the case to the Secretary of the Treasury;

(6) A statement that the agency agrees to reimburse the Secretary of the Treasury for the costs of collection; and

(7)(i) A statement that the agency has reason to believe that the debtor has assets that the Secretary of the Treasury might levy to collect the support; and

(ii) A statement of the nature and location of the assets, if known.

(f) *Review of requests by the Office.*

(1) The Regional Representative will review each request to determine whether it meets the requirements of this section.

(2) If a request meets all requirements, the Regional Representative will promptly certify and transmit the request with a copy of all supporting documentation to the Secretary of the Treasury. At the same time, the

Regional Representative will notify the IV-D agency in writing of the transmittal.

(3)(i) If a request does not meet all requirements, the Regional Representative will attempt to correct the request in consultation with the IV-D agency.

(ii) If the request cannot be corrected through consultation, the Regional Representative will return it to the agency with an explanation of why the request was not certified.

(g) *Notification of changes in case status.*

(1) The IV-D agency shall immediately notify the Regional Representative of the following changes in case status:

(i) A change in the amount due;

(ii) A change in the nature or location of assets;

(iii) A change in the address of the debtor.

(2) The Regional Representative will transmit the revised information to the Secretary of the Treasury.

(Approved by the Office of Management and Budget under control number 0960-0281)

[47 FR 16030, Apr. 14, 1982; 48 FR 7179, Feb. 18, 1983, as amended at 51 FR 37731, Oct. 24, 1986; 56 FR 8004, Feb. 26, 1991]

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

(a) *Past-due support qualifying for offset.* Past-due support as defined in § 301.1 of this chapter qualifies for offset if:

(1) There has been an assignment of the support rights under § 232.11 of this title or section 471(a)(17) of the Act to the State making the request for offset or the IV-D agency is providing services under § 302.33 of this chapter.

(2) For support which has been assigned to the State under § 232.11 of this title or section 471(a)(17) of the Act:

(i) The amount of the support is not less than $150; and (ii) The support has been delinquent for three months or longer.

(3) For support owed in cases where the IV-D agency is providing IV-D services under § 302.33 of this chapter:

(i) The support is owed to or on behalf of a minor child;

(ii) The amount of support is not less than $500;

(iii) At State option, the amount has accrued since the State IV-D agency began to enforce the support order; and

(iv) The State has checked its records to determine if an AFDC or foster care maintenance assigned arrearage exists with respect to the non-AFDC individual or family.

(4) The IV-D agency has in its records:

(i) A copy of the order and any modifications upon which the amount referred is based which specify the date of issuance and amount of support;

(ii) A copy of the payment record, or, if there is no payment record, an affidavit signed by the custodial parent attesting to the amount of support owed; and

(iii) In non-AFDC cases, the custodial parent's current address.

(5) Before submittal, the State IV-D agency has verified the accuracy of the name and social security number of the absent parent and the accuracy of the past-due support amount. If the State IV-D agency has verified this information previously, it need not reverify it.

(6) A notification of liability for past-due support has been received by the Secretary of the Treasury as prescribed by paragraph (c)(2) of this section.

(b) *Notification to OCSE of liability for past-due support.* (1) A State IV-D agency shall submit a notification (or notifications) of liability for past-due support on a magnetic tape to the Office by the submittal date specified by the Office in instructions.

(2) The notification of liability for past-due support shall contain with respect to each delinquency:

(i) The name of the taxpayer who owes the past-due support;

(ii) The social security number of that taxpayer;

(iii) The amount of past-due support owed;

(iv) The State codes as contained in the Federal Information Processing Standards (FIPS) publication of the National Bureau of Standards and also promulgated by the General Services Administration in Worldwide Geographical Location Codes; and

(v) Whether the past-due support is due an individual who applied for services under § 302.33 of this chapter.

(3) The notification of liability for past-due support may contain with respect to each delinquency the taxpayer's IV-D case number and FIPS code for the local IV-D agency where the case originated.

(c) *Review of requests by the Office.* (1) The Deputy Director will review each request to determine whether it meets the requirements of this section.

(2) If a request meets all requirements, the Deputy Director will transmit the request to the Secretary of the Treasury and will notify the State IV-D agency in writing of the transmittal.

(3) If a request does not meet all requirements, the Deputy Director will attempt to correct the request in consultation with the State IV-D agency.

(4) If a request cannot be corrected through consultation, the Deputy Director will return it to the State IV-D agency with a written explanation of why the request could not be transmitted to the Secretary of the Treasury.

(d) *Notification of changes in case status.* (1)The State referring past-due support of offset must, in interstate situations, notify any other State involved in enforcing the support order when it submits an interstate case for

offset and when it receives the offset amount from the IRS.

(2) The State IV-D agency shall within time frames established by the Office in instructions, notify the Deputy Director in writing of any deletion of an amount referred for collection by Federal tax refund offset or any decrease in the amount if the decrease is significant according to guidelines developed by the State. The notification shall contain the information specified in paragraph (b) of this section.

(e) *Notices of offset* – (1) *Advance.* The State IV-D agency, or the Office, if the State requests and the Office agrees, shall send a written advance notice to inform an absent parent that the amount of his or her past-due support will be referred to the IRS for collection by Federal tax refund offset. The notice must inform absent parents:

(i) Of their right to contest the State's determination that past-due support is owed or the amount of past-due support;

(ii) Of their right to an administrative review by the submitting State or at the absent parent's request the State with the order upon which the referral for offset is based;

(iii) Of the procedures and timeframe for contacting the IV-D agency in the submitting State to request administrative review; and

(iv) That, in the case of a joint return, the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to protect the share of the

refund which may be payable to that spouse. If the IV-D agency sends the notice, it must meet the conditions specified by the Office in instructions.

(2) *At offset.* The IRS will notify the absent parent that the offset has been made. The IRS will also notify any individual who filed a joint return with the absent parent of the steps to take in order to secure a proper share of the refund.

(f) *Procedures for contesting in intrastate cases.* (1) Upon receipt of a complaint from an absent parent in response to the advance notice required in paragraph (e)(1) of this section or concerning a tax refund which has already been offset, the IV-D agency must send a notice to the absent parent and, in non-AFDC cases the custodial parent, of the time and place of the administrative review of the complaint and conduct the review to determine the validity of the complaint.

(2) If the complaint concerns a joint tax refund that has not yet been offset, the IV-D agency must inform the absent parent that the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to secure his or her proper share of the refund. If the complaint concerns a joint tax refund which has already been offset, the IV-D agency must refer the absent parent to the IRS.

(3) If the administrative review results in a deletion of, or decrease in, the amount referred for offset, the IV-D agency must notify OCSE in writing within time frames established by the Office and include the information specified in paragraph (b) of this section.

(4) If, as a result of the administrative review, an amount which has already been offset is found to have exceeded the amount of past-due support owed, the IV-D agency must take steps to refund the excess amount to the absent parent promptly.

(g) *Procedures for contesting in interstate cases.* (1) If the absent parent requests an administrative review in the submitting State, the IV-D agency must meet the requirements in paragraph (f) of this section.

(2) If the complaint cannot be resolved by the submitting State and the absent parent requests an administrative review in the State with the order upon which the referral for offset is based, the submitting State must notify the State with the order of the request for an administrative review and provide that State with all necessary information, including the information listed under paragraph (a)(4) of this section, within 10 days of the absent parent's request for an administrative review.

(3) The State with the order must send a notice to the absent parent and, in non-AFDC cases the custodial parent, of the time and place of the administrative review, conduct the review and make a decision within 45 days of receipt of the notice and information from the submitting State.

(4) If the administrative review results in a deletion of, or decrease in, the amount referred for offset, the State with the order must notify the Office in writing within time frames established by the Office and include the information specified in paragraph (b) of this section.

(5) Upon resolution of a complaint after an offset has been made, the State with the order must notify the submitting State of its decision promptly.

(6) When an administrative review is conducted in the State with the order, the submitting State is bound by the decision made by the State with the order.

(7) Based on the decision of the State with the order, the IV-D agency in the submitting State must take steps to refund any excess amount to the absent parent promptly.

(8) In computing incentives under § 304.12 of this part, if the case is referred to the State with the order for an administrative review, the collections made as a result of Federal tax refund offset will be treated as having been collected in full by both the submitting State and the State with the order.

(h) *Distribution of collections.* (1) Collections received by the IV-D agency as a result of refund offset to satisfy AFDC or non-AFDC past-due support shall be distributed as past-due support as required under § 302.51(b) (4) and (5) and (e) of this chapter.

(2) Collections received by the IV-D agency in foster care maintenance cases shall be distributed as past-due support under § 302.52(b) (3) and (4) of this chapter.

(3) The IV-D agency must inform individuals receiving services under § 302.33 of this chapter in advance that amounts offset will be applied first to satisfy any past-due support which has been assigned to the State under § 232.11 of this title, 42 CFR 433.146, or section 471(a)(17) of the Act and submitted for Federal tax refund offset.

(4) If the amount collected is in excess of the amounts required to be distributed under § 302.51 (b) (4) and (5) and (e) or § 302.52(b) (3) and (4) of this chapter, the IV-D agency must repay the excess to the absent parent whose refund was offset or to the parties filing a joint return within a reasonable period in accordance with State law.

(5) In cases where the Secretary of the Treasury, through OCSE, notifies the State that an offset is being made to satisfy non-AFDC past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is earlier.

(6) Collections from offset may be applied only against the past-due support which was specified in the advance notice described in paragraph (e)(1) of this section.

(i) *Payment of fee.* (1) A refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the IRS for the full cost of the offset procedure, shall be deducted from the offset amount and credited to the IRS appropriations which bore all or part of the costs involved in making the collection. The full amount offset must be credited against the obligor's payment record. The fee which the Secretary of the Treasury may impose with respect to non-AFDC submittals shall not exceed $25 per submittal.

(2) The State IV-D agency may charge an individual who is receiving services under § 302.33(a)(1) (i) or (iii) of this chapter a fee not to exceed $25 for submitting past-due support for Federal tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(3) Any State which requests the Office to send the advance written notice under paragraph (e)(1) of this section will be charged a fee, in an amount established by the Office in instructions, for printing and mailing of pre-offset notices. This fee shall be credited to the Health and Human Services appropriations which bore all or part of the costs involved in making the collection.

(j) Each State involved in a referral of past-due support for offset must comply with instructions issued by the Office.

(k) *Limitation of referral for offset of non-AFDC past-due support.* Offset of Federal income tax refunds to satisfy past-due support in non-AFDC cases is limited to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1991.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19651, May 9, 1985; 50 FR 31719, Aug. 6, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 53 FR 47710, Nov. 25, 1988; 54 FR 32312, Aug. 4, 1989; 56 FR 8005, Feb. 26, 1991]

§ 303.73 Applications to use the courts of the United States to enforce court orders.

(a) The IV-D agency may apply to the Secretary for permission to use a United States district court to enforce a support order of a court of competent jurisdiction against an absent parent who is present in another State if the IV-D agency can furnish evidence to demonstrate that:

(1) The State in which the absent parent is present has not undertaken to enforce the order against the parent within 60 days of the receipt of a request by the originating State under uniform reciprocal enforcement of support procedures or other legal processes required by § 303.7; and

(2) Use of the United States district court is the only reasonable method of enforcing the order.

(b) The applications shall be submitted to the Regional Office, using the forms prescribed, signed by the head of the IV-D agency or his designee, attesting to the following:

(1) The requesting IV-D agency has undertaken to obtain the assistance of the other State to enforce the order;

(2) The other State has failed to secure compliance with the order;

(3) The requesting IV-D agency has provided notice to the State-level central office of the IV-D agency of the other State 60 days or more after requesting the other State's assistance that it would request the Secretary to

certify the case for use of a United States district court if the other State did not respond to the request for assistance within 30 days of the notice, and that an unsatisfactory response would not preclude a request to the Secretary. Copies of the original request, the notice, and any response thereto shall be furnished with the application.

(c) The Regional Office will review each application to determine if it meets the requirements of paragraphs (a) and (b) of this section. If a request meets these requirements, the case will promptly be certified for enforcement in the United States district court. If the request fails to meet these requirements, the application shall be denied and returned to the IV-D agency with an explanation of the refusal to certify.

[47 FR 24719, June 8, 1982, as amended at 54 FR 32312, Aug. 4, 1989]

§ 303.80 Recovery of direct payments.

(a) *Definition. Direct payment* means an assigned support payment from an absent parent which is received directly by an AFDC recipient.

(b) *Direct payments that must be recovered by the IV-D agency.* In States that place the responsibility for recovery of direct payments with the IV-D agency under the State plan option at § 302.31(a)(3)(ii) of this chapter, the IV-D agency must recover all such payments. The only exception is a direct payment retained by the recipient during the period when the sanction for failure to cooperate is in effect, as provided at 45 CFR 232.12(d).

(c) *What the IV-D agency must do prior to establishing a repayment agreement with an AFDC recipient.* Before establishing a repayment agreement with an AFDC recipient, the IV-D agency must:

(1) Document that the recipient has, in fact, received and retained direct payments, and the amounts;

(2) Provide written notice of intent to recover the payments to the recipient that includes the following:

(i) An explanation of the recipient's responsibility to cooperate by turning over direct payments as a condition of eligibility for AFDC, and the sanction for failure to cooperate as provided at § 232.12(d) of this title;

(ii) A detailed list of the direct payments which have been retained by the recipient, as documented by the IV-D agency, including the dates and amounts of these payments as well as a description of any documentary evidence (such as photocopies of the checks) which the IV-D agency possesses;

(iii) A proposal for a repayment plan between the recipient and the IV-D agency;

(iv) An explanation that repaying retained direct payments to the IV-D agency according to a signed repayment plan which meets the conditions of paragraph (d) below is a condition of cooperation under § 232.12(b)(4) of this title.

(3) Provide the recipient with an opportunity for an informal meeting to clarify the recipient's responsibilities and to resolve any differences regarding repayment of the directly received support by the recipient.

(d) Requirements of the repayment agreement. The repayment agreement between the IV-D agency and the recipient who has received and retained direct payments must be reasonably related to:

(1) The recipient's income and resources including the AFDC grant; and

(2) The total amount of retained support.

(e) *Referrals to the IV-A agency for a determination of failure to cooperate.* The IV-D agency must refer a case to the IV-A agency with evidence of failure to cooperate if:

(1) The recipient refuses to sign a repayment agreement; or

(2) The recipient enters into a repayment agreement but subsequently fails to make a payment under the terms of the agreement.

(f) *Subsequent notification to the IV-A agency as required.* If the IV-D agency has referred a case to the IV-A agency with evidence of failure to cooperate for either of the reasons in paragraph (e) of this section, the IV-D agency must notify the IV-A agency when either of the following changes in circumstances occurs:

(1) The recipient who refused to enter into a repayment agreement consents to do so and signs the agreement; or

(2) The recipient who defaulted on an agreement begins making regularly scheduled payments according to the agreement. Under this paragraph, a regularly scheduled payment is a payment made in the current month for the amount specified in the initial repayment

agreement between the IV-D agency and the recipient. The resumption of regularly scheduled payments cannot be interpreted to mean payment of amounts which were not paid during the period of default, nor amounts which could be categorized as balloon payments or which would be due as a result of an acceleration clause. To recover amounts due from any period of default, the IV-D agency must extend the duration of the repayment agreement.

[47 FR 43956, Oct. 5, 1982, as amended at 50 FR 34696, Aug. 27, 1985]

§ 303.100 Procedures for wage or income withholding.

(a) *General withholding requirements.* (1) The State must ensure that in the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her wages must be withheld, in accordance with this section, as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.

(3) The total amount to be withheld under paragraphs (a)(1), (a)(2) and, if applicable, (f)(1)(iii) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any other action by the court or entity that issued it other than that required or permitted under this section.

(5) If there is more than one notice for withholding against a single absent parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). The State must establish procedures for allocation of support among families, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State.

(7) The State must have procedures for promptly terminating withholding:

(i) In all cases, when there is no longer a current order for support and all arrearages have been satisfied; or,

(ii) At State option, when the absent parent requests termination and withholding has not been terminated previously and subsequently initiated, and the absent parent meets the conditions for an alternative arrangement set forth under paragraph (b)(3) of this section.

(8) The State must have procedures for promptly refunding to absent parents amounts which have been improperly withheld.

(9) The State may extend its withholding to include withholding from forms of income other than wages.

(10) Support orders issued or modified in IV-D cases must include a provision requiring the absent parent to keep the IV-D agency informed of the name and address of his or her current employer, whether the absent parent has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information.

(b) *Immediate withholding on IV-D cases.* (1) In the case of a support order being enforced under this part that is issued or modified on or after November 1, 1990, the wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order, except that such wages shall not be subject to withholding under this paragraph in any case where:

(i) Either the absent or custodial parent demonstrates, and the court or administrative authority finds, that there is good cause not to require immediate withholding; or (ii) A written agreement is reached between the absent and custodial parent, and, at State option, the State in IV-D cases in which there is an assignment of support rights to the State, which provides for an alternative arrangement.

(2) For the purposes of this paragraph, any finding that there is good cause not to require immediate withholding must be based on at least:

(i) A written determination that, and explanation by the court or administrative authority of why, implementing immediate wage withholding would not be in the best interests of the child; and

(ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders.

(3) For purposes of this paragraph, *written agreement* means a written alternative arrangement signed by both the custodial and absent parent, and, at State option, by the State in IV-D cases in which there is an assignment of support rights to the State, and reviewed and entered in the record by the court or administrative authority.

(c) Initiated withholding in IV-D cases. In the case of wages not subject to immediate withholding under paragraph (b) of this section, including cases subject to a finding of good cause or to a written agreement:

(1) The wages or the absent parent shall become subject to the withholding on the date on which the payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of:

(i) The date on which the absent parent requests that withholding begin;

(ii) The date on which the custodial parent requests that withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved; or

(iii) Such earlier date as State law or procedure may provide.

(2) The State must send the advance notice required under paragraph (d) of this section to the absent parent within 15 calendar days of the appropriate date under paragraph (c)(1) of this section if the absent parent's address is known on that date, or, if the absent parent's address is not known on that date, within 15 calendar days of locating the absent parent.

(3) The only basis for contesting a withholding under this paragraph is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged absent parent.

(d) *Advance notice to the absent parent in cases of initiated withholding.* (1) On the date specified in paragraph (c)(2) of this section, the State must send advance notice to the absent parent regarding the initiated withholding. The notice must inform the absent parent:

(i) Of the amount of overdue support that is owed, if any, and the amount of wages that will be withheld;

(ii) That the provision for withholding applies to any current or subsequent employer or period of employment;

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(iv) Of the period within which the absent parent must contact the State in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding; and

(v) Of the actions the State will take if the individual contests the withholding, including the procedures established under paragraph (e) of this section.

(2)(i) The requirement for advance notice to the absent parent under paragraph (d)(1) of this section and for State procedures when the absent parent contests the withholding in response to the advance notice under paragraph (e) of this section do not apply in the case of any State which had a withholding system in effect on August 16, 1984 if the system provided on that date, and continues to provide, any other procedures as may be necessary to meet the procedural due process requirements of State law.

(ii) Any State in which paragraph (d)(2)(i) of this section applies must meet all other requirements of this section and must send notice to the employer under paragraph (f) of this section within 15 calendar days of the appropriate date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, if the employer's address is not known on that date, within 15 calendar days of locating the employer's address.

(e) *State procedures when the absent parent contests initiated withholding in response to the advance notice.* The State must establish procedures for use when an absent parent contests the withholding. Within 45 calendar days of sending advance notice to the absent parent under paragraph (d) of this section, the State must:

(1) Provide the absent parent an opportunity to present his or her case to the State;

(2) Determine if the withholding shall occur based on an evaluation of the facts, including the absent parent's statement of his or her case;

(3) Notify the absent parent whether or not the withholding is to occur and, if it is to occur, include in the notice the time frames within which the withholding will begin and the information given to the employer in the notice required under paragraph (f) of this section; and

(4) If withholding is to occur, send the notice required under paragraph (f) of this section.

(f) *Notice to the employer for immediate and initiated withholding.* (1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following:

(i) The amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (f)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(ii) That the employer must send the amount to the State (or to such other individual or entity as the State may direct) within 10 working days of the date the absent parent is paid, and must report to the State (or to such other individual or entity as the State may direct) the date on which the amount was withheld from the absent parent's wages;

(iii) That, in addition to the amount withheld for support, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That the withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding;

(vi) That, if the employer fails to withhold wages in accordance with the provisions of the notice, the employer is liable for the accumulated amount the employer should have withheld from the absent parent's wages;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same wages;

(viii) That the employer may combine withheld amounts from absent parents' wages in a single payment to each appropriate agency requesting withholding and

separately identify the portion of the single payment which is attributable to each individual absent parent;

(ix) That the employer must implement withholding no later than the first pay period that occurs after 14 working days following the date the notice was mailed; and

(x) That the employer must notify the State promptly when the absent parent terminates employment and provide the absent parent's last known address and the name and address of the absent parent's new employer, if known.

(2) In the case of an immediate wage withholding under paragraph (b) of this section, the State must issue the notice to the employer specified in paragraph (f)(1) of this section within 15 calendar days of the date the support order is entered if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address.

(3) In the case of initiated withholding, if the absent parent fails to contact the State to contest withholding within the period specified in the advance notice in accordance with the requirements of paragraph (d)(1)(iv) of this section, the State must send the notice to the employer required under paragraph (f)(1) of this section within 15 calendar days of the end of the contact period if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address.

(4) If the absent parent changes employment within the State when a withholding is in effect, the State must notify the absent parent's new employer, in accordance with the requirements of paragraph (f)(1) of this section, that the withholding is binding on the new employer.

(g) *Administration of withholding.* (1) The State must designate a public agency to administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor support payments.

(2)(i) The State may designate public or private entities to administer withholding on a State or local basis under the supervision of the State withholding agency if the entity or entities are publicly accountable and follow the procedures specified by the State; and (ii) the State may designate only one entity to administer withholding in each jurisdiction.

(3) Effective October 1, 1995, the State must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State.

(4) Amounts withheld must be distributed in accordance with section 457 of the Act and §§ 302.32, 302.51 and 302.52 of this chapter.

(5) The State must reduce its IV-D expenditures by any interest earned by the State's designee on withheld amounts.

(h) *Interstate withholding.* (1) The State law must provide for procedures to extend the State's withholding system so that the system will include withholding from

income or wages derived within the State in cases where the applicable support orders were issued in other States. A State may require registration of orders from other States for purposes of enforcement through withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the underlying or original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding beyond the timeframes established in paragraph (h)(5) of this section.

(2) The State law must require employers to comply with a withholding notice issued by the State.

(3) Within 20 calendar days of a determination that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out withholding, the initiating State must notify the IV-D agency of the State in which the absent parent is employed to implement interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages, if appropriate. If necessary, the State where the support order is entered must provide the information necessary to carry out the withholding within 30 calendar days of receipt of a request for information by the initiating State.

(4) The State in which the absent parent is employed must implement withholding in accordance

with paragraph (h)(5) of this section upon receipt of the notice required in paragraph (h)(3) of this section.

(5) The State in which the absent parent is employed must:

(i) Within 15 calendar days of location of the absent parent and his or her employer, send notice to the absent parent, if appropriate, in accordance with the requirements of paragraph (d) of this section;

(ii) Provide the absent parent with an opportunity to contest the withholding, if appropriate, in accordance with paragraph (e) of this section;

(iii) Send notice to the employer in accordance with the requirements of paragraph (f) of this section; and

(iv) Notify the State in which the custodial parent is receiving services when the absent parent is no longer employed in the State and provide the name and address of the absent parent and new employer, if known.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State in which the absent parent is employed.

(7) Except with respect to when withholding must be implemented which is controlled by the State where the support order was entered, the law and procedures of the State in which the absent parent is employed shall apply.

(i) *Provision for withholding in all child support orders.* Child support orders issued or modified in the State between October 1, 1985, and January 1, 1994, or modified on or after January 1, 1994, must have a provision

for withholding of wages, in order to ensure that withholding as a means of support is available if arrearages occur without the necessity of filing an application for IV-D services. This requirement does not alter the requirement governing all IV-D cases in paragraph (a)(4) of this section that enforcement under the State plan must proceed without the need for a withholding provision in the order.

[57 FR 30682, July 10, 1992]

§ 303.101 Expedited processes.

(a) *Definition. Expedited processes* means administrative or expedited judicial processes or both which increase effectiveness and meet processing times specified in paragraph (b)(2) of this section.

(b) *Basic requirement.* (1) The State must have in effect and use, in interstate and intrastate cases, expedited processes as specified under this section to establish paternity and to establish and enforce support orders.

(2) Under expedited processes:

(i) In IV-D cases needing support order establishment, regardless of whether paternity has been established, action to establish support orders must be completed from the date of service of process to the time of disposition within the following timeframes: (A) 75 percent in 6 months; and (B) 90 percent in 12 months.

(ii) In IV-D cases where a support order has been established, actions to enforce the support order must be taken within the timeframes specified in §§ 303.6(c)(2) and 303.100;

(iii) For purposes of the timeframe at § 303.101(b)(2)(i), in cases where the IV-D agency uses long-arm jurisdiction and disposition occurs within 12 months of service of process on the alleged father or noncustodial parent, the case may be counted as a success within the 6 month tier of the timeframe, regardless of when disposition occurs in the 12 month period following service of process.

(iv) Disposition, as used in paragraphs (b)(2)(i) and (iii) of this section, means the date on which a support order is officially established and/or recorded or the action is dismissed.

(3) The State may include paternity establishment in the expedited processes in effect in the State.

(4) If a case involves complex issues requiring judicial resolution, the State must establish a temporary support obligation under expedited processes and may then refer the unresolved issues to the full judicial system for resolution.

(c) *Safeguards.* Under expedited processes:

(1) Paternities and orders established by means other than full judicial process must have the same force and effect under State law as paternities and orders established by full judicial process within the State;

(2) The due process rights of the parties involved must be protected;

(3) The parties must be provided a copy of the voluntary acknowledgment of paternity, paternity determination, and/or support order;

(4) There must be written procedures for ensuring the qualification of presiding officers;

(5) Recommendations of presiding officers may be ratified by a judge; and

(6) Action taken may be reviewed under the State's generally applicable judicial procedures.

(d) *Functions.* The functions performed by presiding officers under expedited processes must include at minimum:

(1) Taking testimony and establishing a record;

(2) Evaluating evidence and making recommendations or decisions to establish paternity and to establish and enforce orders;

(3) Accepting voluntary acknowledgment of paternity or support liability and stipulated agreements setting the amount of support to be paid;

(4) Entering default orders upon a showing that process has been served on the defendant in accordance with State law, that the defendant failed to respond to service in accordance with State procedures, and any additional showing required by State law; and

(5) Ordering genetic tests in contested paternity cases in accordance with § 303.5(d)(1).

(e) *Exemption for political subdivisions.* A State may request an exemption from any of the requirements of this section for a political subdivision on the basis of the effectiveness and timeliness of paternity establishment,

support order issuance or enforcement within the political subdivision in accordance with the provisions of § 302.70(d) of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19655, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32312, Aug. 4, 1989; 59 FR 66249, Dec. 23, 1994]

§ 303.102 Collection of overdue support by State income tax refund offset.

(a) *Overdue support qualifying for offset.* Overdue support qualifies for State income tax refund offset if:

(1) There has been an assignment of the support obligation under § 232.11 of this title or section 471(a)(17) of the Act or the IV-D agency is providing services under § 302.33 of this chapter, and

(2) The State does not determine, using guidelines it must develop which are generally available to the public, that the case is inappropriate for application of this procedure.

(b) *Accuracy of amounts referred for offset.* The IV-D agency must establish procedures to ensure that:

(1) Amounts referred for offset have been verified and are accurate; and

(2) The appropriate State office or agency is notified of any significant reductions in (including an elimination of) an amount referred for collection by State income tax refund offset.

(c) *Notice to custodial parent.* The IV-D agency must inform individuals receiving services under § 302.33 of this chapter, in advance:

(1) That, for cases in which medical support rights have been assigned under 42 CFR 433.146, and amounts are collected which represent specific dollar amounts designated in the support order for medical purposes, amounts offset will be distributed under § 302.51(e) of this chapter; and

(2) If amounts offset will be applied first to satisfy any past-due support which has been assigned to the State under § 232.11 of this title or section 471(a)(17) of the Act.

(d) *Advance notice to absent parent.* The State must send a written advance notice to inform the absent parent of the referral for State income tax refund offset and of the opportunity to contest the referral.

(e) *Procedures for contesting offset and for reimbursing excess amounts offset.* (1) The State must establish procedures, which are in full compliance with the State's procedural due process requirements, for an absent parent to use to contest the referral of overdue support for State income tax refund offset.

(2) If the offset amount is found to be in error or to exceed the amount of overdue support, the State IV-D agency must take steps to refund the excess amount in accordance with procedures that include a mechanism for promptly reimbursing the absent parent.

(3) The State must establish procedures for ensuring that in the event of a joint return, the absent parent's

spouse can apply for a share of the refund, if appropriate, in accordance with State law.

(f) *Fee for certain cases.* The State IV-D agency may charge an individual who is receiving services under § 302.33(a)(1) (i) or (iii) of this chapter a reasonable fee to cover the cost of collecting past-due support using State tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(g) *Distribution of collections.* (1) A State must distribute collections received as a result of State income tax refund offset: (i) for an AFDC case, under § 302.51(b)(4) and (5) and (e) of this chapter;

(ii) For a foster care maintenance case, under § 302.52(b)(3) and (4) of this chapter; and

(iii) For a non-AFDC case, except as specified in paragraph (g)(1)(iv) of this section, by paying offset amounts to the family first or using them first to reimburse the State, depending on the State's method for distributing arrearage collections in non-AFDC cases.

(iv) For cases in which medical support rights have been assigned under 42 CFR 433.146, and amounts are collected which represent specific dollar amounts designated in the support order for medical purposes, under § 302.51(e) of this chapter.

(2) If the amount collected is in excess of the amounts required to be distributed under paragraph (g)(1) of this section, the IV-D agency must repay the excess to the absent parent whose State income tax refund was offset within a reasonable period in accordance with State law.

(3) The State must credit amounts offset on individual payment records.

(h) *Information to the IV-D agency.* The State agency responsible for processing the State tax refund offset must notify the State IV-D agency of the absent parent's home address and social security number or numbers. The State IV-D agency must provide this information to any other State involved in enforcing the support order.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19655, May 9, 1985; 50 FR 31720, Aug. 6, 1985 as amended at ; 51 FR 37731, Oct. 24, 1986; 54 FR 32312, Aug. 4, 1989; 56 FR 8005, Feb. 26, 1991]

§ 303.103 Procedures for the imposition of liens against real and personal property.

(a) The State shall have in effect and use procedures which require that a lien will be imposed against the real and personal property of an absent parent who owes overdue support and who resides or owns property in the State.

(b) The State must develop guidelines which are generally available to the public to determine whether the case is inappropriate for application of this procedure.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19656, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 303.104 Procedures for posting security, bond or guarantee to secure payment of overdue support.

(a) The State shall have in effect and use procedures which require that absent parents post security, bond or give some other guarantee to secure payment of overdue support.

(b) The State must provide advance notice to the absent parent regarding the delinquency of the support payment and the requirement of posting security, bond or guarantee, and inform the absent parent of his or her rights and the methods available for contesting the impending action, in full compliance with the State's procedural due process requirements.

(c) The State must develop guidelines which are generally available to the public to determine whether the case is inappropriate for application of this procedure.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19656, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 303.105 Procedures for making information available to consumer reporting agencies.

(a) *Consumer reporting agency* means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the

purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(b) For cases in which the amount overdue support exceeds $1,000, the IV-D agency must have in effect procedures to make information available to consumer reporting agencies upon their request regarding the amount of overdue support owed by an absent parent. The procedures must include use of guidelines that are generally available to the public to determine whether application of this procedure is inappropriate in a particular case. In cases in which the overdue support is less than $1,000, these procedures are at the option of the State.

(c) The State IV-D agency may charge the agency a fee not to exceed the actual cost to the State of providing the information under paragraph (b) of this section.

(d) The IV-D agency must provide advance notice to the absent parent who owes the support concerning the proposed release of the information to the consumer reporting agency and must inform the absent parent of the methods available for contesting the accuracy of the information.

(e) The IV-D agency must comply with all of the procedural due process requirements of State law before releasing the information.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19656, May 9, 1985; 50 FR 31720, Aug. 6, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 303.106 Procedures to prohibit retroactive modification of child support arrearages.

(a) The State shall have in effect and use procedures which require that any payment or installment of support under any child support order is, on and after the date it is due:

(1) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(2) Entitled as a judgment to full faith and credit in such State and in any other State; and

(3) Not subject to retroactive modification by such State or by any other State except as provided in paragraph (b) of this section.

(b) The procedures referred to in paragraph (a)(3) of this section may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

[54 FR 15764, Apr. 19, 1989]

§ 303.107 Requirements for cooperative arrangements.

The State must ensure that all cooperative arrangements:

(a) Contain a clear description of the specific duties, functions and responsibilities of each party;

(b) Specify clear and definite standards of performance which meet Federal requirements;

(c) Specify that the parties will comply with title IV-D of the Act, implementing Federal regulations and any other applicable Federal regulations and requirements;

(d) Specify the financial arrangements including budget estimates, covered expenditures, methods of determining costs, procedures for billing the IV-D agency, and any relevant Federal and State reimbursement requirements and limitations;

(e) Specify the kind of records that must be maintained and the appropriate Federal, State and local reporting and safeguarding requirements; and

(f) Specify the dates on which the arrangement begins and ends, any conditions for revision or renewal, and the circumstances under which the arrangement may be terminated.

[54 FR 30223, July 19, 1989]

PART 305 – AUDIT AND PENALTY

§ 305.0 Scope.

This part implements the requirements in sections 452(a)(4) and 403(h) of the Act for an audit, at least once

every three years, of the effectiveness of State Child Support Enforcement programs under title IV-D and for a possible reduction in Federal reimbursement for a State's title IV-A program pursuant to sections 403(h) and 404(d) of the Act. Sections 305.10 through 305.13 describe the audit. Section 305.20 sets forth audit criteria and subcriteria the Office will use to determine program effectiveness and defines an effective program for purposes of an audit. Section 305.98 sets forth the performance indicators the Office will use to determine State IV-D program effectiveness.

Section 305.99 provides for the issuance of a notice and corrective action period if a State is found by the Secretary not to have an effective IV-D program. Section 305.100 provides for the imposition of a penalty if a State is found by the Secretary not to have had an effective program and to have failed to take corrective action and achieve substantial compliance within the period prescribed by the Secretary.

[50 FR 40140, Oct. 1, 1985; 59 FR 66249, Dec. 23, 1994]

§ 305.1 Definitions.

(a) The definitions found in § 301.1 of this chapter are also applicable to this part.

(b) As used in this part *procedures* means a written set of instructions which describe in detail the step by step actions to be taken by child support enforcement personnel in the performance of a specific function under the State's IV-D plan. The IV-D agency may issue general instructions on one or more functions, and delegate

responsibility for the detailed procedures to the office, agency, or political subdivision actually performing the function.

§ 305.10 Timing and scope of audit.

(a) The Office will conduct an audit in accordance with sections 452(a)(4) and 403(h) of the Act, at least once every three years, to evaluate the effectiveness of each State's program in carrying out the purposes of title IV- D of the Act and to determine that the program meets the title IV-D requirements. The audit of each State's program will be a comprehensive review using the criteria prescribed in §§ 305.20 and 305.98 of this part.

(b) The Office will conduct an annual comprehensive audit in the case of a State that is being penalized. For a State operating under a corrective action plan, the review at the end of the corrective action period will cover only the criteria specified in the notice of noncompliance as prescribed in § 305.99 of this part.

(c) During the course of the audit, the Office will:

(1) Make a critical investigation of the State's IV-D program through inspection, inquiries, observation, and confirmation; and

(2) Use the audit standards promulgated by the Comptroller General of the United States in "Government Auditing Standards."

[50 FR 40140, Oct. 1, 1985; 50 FR 49392. Dec. 2, 1985; 59 FR 66249, Dec. 23, 1994]

§ 305.11 Audit period.

The audit will cover a period comprised of any 12 consecutive months. When the State is operating under a corrective action plan, the review will cover the first three-month period after the corrective action period. When the State fails to meet audit criteria related to the performance indicator under § 305.98 of this part, the review will cover the first full four quarters following the end of the corrective action period. The audit may, at State request, be conducted prior to the end of the one-year period prescribed under § 305.10(b) of this part when the State is being penalized under § 305.100 of this part.

[55 FR 8467, Mar. 8, 1990]

§ 305.12 State comments.

(a) Prior to the start of the actual audit, the Office will hold an audit entrance conference with the IV-D agency. At that conference, the Office will explain how the audit will be performed and make any necessary arrangements.

(b) Prior to concluding the audit fieldwork, the Office will afford the State IV-D agency an opportunity for an audit exit conference at which time preliminary audit findings will be discussed and the IV-D agency may present any additional matter it believes should be considered in the audit findings.

(c) At the conclusion of the audit fieldwork, the Office will prepare and send to the IV-D agency a copy of its interim report on the results of the audit. Within 45

days from the date the report was sent by certified mail, the IV-D agency may submit written comments on any part of the report which the IV-D agency believes to be in error. The Office will incorporate such comments, if any, into the final audit report.

§ 305.13 State cooperation in annual audit.

(a) Each State shall make available to the Office such records or other supporting documentation as the Office's audit staff may request. The State shall also make available personnel associated with the State's IV-D program to provide answers which the audit staff may find necessary in order to conduct or complete the audit.

(b) Failure to comply with the requirements of this section may necessitate a finding that the State has failed to comply with the particular criteria being audited.

§ 305.20 Effective support enforcement program.

For the purposes of this part and section 403(h) of the Act, in order to be found to have an effective program in substantial compliance with the requirements of title IV-D of the Act:

(a) For any audit period which begins on or after December 23, 1994, a State must meet the IV-D State plan requirements contained in Part 302 of this chapter measured as follows:

(1) The State must meet the requirements under the following criteria:

(i) Statewide operations, § 302.10;

(ii) Reports and maintenance of records, § 302.15(a);

(iii) Separation of cash handling and accounting functions, § 302.20; and

(iv) Notice of collection of assigned support, § 302.54.

(2) The State must have and use procedures required under the following criteria in at least 90 percent of the cases reviewed for each criterion:

(i) Establishment of cases, § 303.2(a); and

(ii) Case closure criteria, § 303.11.

(3) The State must have and use procedures required under the following criteria in at least 75 percent of the cases reviewed for each criterion;

(i) Collection and distribution of support payments, including: Collection and distribution of support payments by the IV-D agency under §§ 302.32(b) and (f); distribution of support collections under § 302.51; and distribution of support collected in title IV-E foster care maintenance cases under § 302.52;

(ii) Establishment of paternity and support orders, including:

Establishment of a case under § 303.2(b); services to individuals not receiving AFDC or title IV-E foster care assistance, under §§ 302.33(a)(1) through (4); provision of services in interstate IV-D cases under §§ 303.7(a), (b) and

(c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; establishment of paternity under §§ 303.5(a) and (f); guidelines for setting child support awards under § 302.56; and establishment of support obligations under §§ 303.4(d), (e) and (f);

(iii) Enforcement of support obligations, including, in all appropriate cases: Establishment of a case under § 303.2(b); services to individuals not receiving AFDC or title IV-E foster care assistance, under §§ 302.33(a)(1) through (4); provision of services in interstate IV-D cases under §§ 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; enforcement of support obligations under § 303.6, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) to State and Federal income tax refund offset; and wage withholding under § 303.100. In cases in which wage withholding cannot be implemented or is not available and the non-custodial parent has been located. States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b) of this chapter.

(iv) Review and adjustment of child support orders, including: establishment of a case under § 303.2(b); services to individuals not receiving AFDC or title IV-E foster care assistance, under §§ 302.33(a)(1) through (4); provision of services in interstate IV-D cases under §§ 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; guidelines for setting child support awards under § 302.56; and

review and adjustment of support obligations under § 303.8; and

(v) Medical support, including: establishment of a case under § 303.2(b); services to individuals not receiving AFDC or title IV-E foster care assistance, under §§ 302.33(a)(1) through (4); provision of services in interstate IV-D cases under §§ 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; securing medical support information under § 303.30; and securing and enforcing medical support obligations under § 303.31.

(4) With respect to the 75 percent standard in § 305.20(a)(3):

(i) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV-D cases under §§ 303.7(a),(b) and (c)(4) through (6),(8) and (9); location and support order establishment under §§ 303.3(b)(3) and (5), and 303.4(d), if a support order needs to be established in a case and an order is established during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(ii) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV-D cases under §§ 303.7(a), (b) and (c)(4) through (6),(8) and (9); and location and review and adjustment of support orders contained in §§ 303.3(b)(3), and (5), and 303.8, if a particular case has been reviewed and meets the conditions for adjustment under State laws and procedures and § 303.8, and the order is adjusted, or a

determination is made as a result of a review, during the audit period, that an adjustment is not needed, in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(iii) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV-D cases under §§ 303.7(a), (b) and (c)(4) through (6), (8) and (9); and location and wage withholding in §§ 303.3(b)(3) and (5), and 303.100, if wage withholding is appropriate in a particular case and wage withholding is implemented and wages are withheld during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(iv) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV-D cases under §§ 303.7 (a), (b) and (c)(4) through (6), (8) and (9); and location and enforcement of support obligations in §§ 303.3(b)(3) and (5), and 303.6, if wage withholding is not appropriate in a particular case and the State uses at least one enforcement technique available under State law, in addition to Federal and State income tax refund offset, which results in a collection received during the audit period, the State will be considered to have taken appropriate action in the case for audit purposes.

(5) The State must meet the requirements for expedited processes under §§ 303.101(b)(2) (i) and (iii), and (e).

(6) The State must meet the criteria referred to in § 303.98(c) of this part relating to the performance indicators prescribed in § 305.98(a).

[50 FR 40140, Oct. 1, 1985, as amended at 50 FR 41894, Oct. 15, 1985; 50 FR 49392, Dec. 2, 1985; 51 FR 37732, Oct. 24, 1986; 43 FR 5258, Feb. 22, 1988; 53 FR 27518, July 21, 1988; 59 FR 66249, Dec. 23, 1994]

§§ 305.21-305.57

[Removed and Reserved]

§ 305.98 Performance indicators and audit criteria.

(a) Beginning with the fiscal year 1986 audit period, the Office will use the following performance indicators in determining whether each State has an effective IV-D program.

(1) AFDC IV-D collections divided by total IV-D expenditures (less laboratory cost incurred in determining paternity at State option);

(2) Non-AFDC IV-D collections divided by total IV-D expenditures (less laboratory costs incurred in determining paternity at State option); and

(3) AFDC IV-D collections divided by IV-A assistance payments (Less payments to unemployed parents).

(b) Beginning with the fiscal year 1988 audit period, the Office will use the performance indicators prescribed

in paragraph (a) of this section and the following performance indicators in determining whether each State has an effective IV-D program.

(1) AFDC IV-D collections on support due (for a fiscal year) divided by total AFDC support due (for the same fiscal year);

(2) Non-AFDC IV-D collections on support due (for a fiscal year) divided by total non-AFDC support due (for the same fiscal year);

(3) AFDC IV-D collections on support due (for prior periods) divided by total AFDC support due (for the same periods); and

(4) Non-AFDC IV-D collection on support due (for prior periods) divided by total non-AFDC support due (for the same periods).

(c) The Office shall use the following procedures and audit criteria to measure State performance.

(1) The ratio for each of the performance indicators in paragraph (a) of this section will be evaluated on the basis of the scores in the tables in paragraphs (c)(1)(i) through (iii) of this section. The tables show the scores the States will receive for different levels of performance.

(i) Dollar of AFDC IV-D collections per dollar of total IV-D expenditures (less laboratory costs incurred in determining paternity at State option).

Level of performance	Score
$ .00	0
$ .01-$ .09	2

$ .10-$ .19	.4
$ .20-$ .29	.6
$ .30-$ .39	.8
$ .40-$ .49	.10
$ .50-$ .59	.12
$ .60-$ .69	.14
$ .70-$ .79	.16
$ .80-$ .89	.18
$ .90-$ .99	.20
$1.00-$1.19	.22
$1.20-$1.39	.24
$1.40 or more	.25

(ii) Dollar of non-AFDC IV-D collections per dollar of total IV-D expenditures (less laboratory costs incurred in determining paternity at State option).

Level of performance	Score
$ .00	.0
$ .01-$ .09	.4
$ .10-$ .19	.8
$ .20-$ .29	.12
$ .30-$ .39	.16
$ .40-$ .49	.20
$ .50-$ .59	.24
$ .60-$ .69	.28
$ .70-$ .79	.32
$ .80-$ .89	.36
$ .90-$ .99	.40
$1.00-$1.19	.44
$1.20-$1.39	.48
$1.40 or more	.50

(iii) AFDC IV-D collections divided by IV-A assistance payments (less payments to unemployed parents).

Level of performance (in percent)	Score
0 to 1.9 percent	0
2 to 3.9 percent	5
4 to 4.9 percent	10
5 to 5.9 percent	15
6 to 6.9 percent	20
7 or more	25

(2) To be found to meet the audit criteria, a State's total score must equal or exceed 70.

Examples. A State achieves levels of performance of $1.22, $1.35 and 6.5 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 24, 48 and 20 on these performance indicators. The State would be found to meet the audit criteria because the total score is 92.

A State achieves levels of performance of $.65, $.65 and 2.5 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 14, 28 and 5 on these performance indicators. The State would be found not to meet the audit criteria because the total score is 47.

A State achieves levels of performance of $.92, $.96 and 4.2 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 20, 40 and 10 on these performance indicators. The State would be found to meet the audit criteria because the total score is 70.

(d) The scoring system provided in paragraph (c) of this section will be described and updated whenever

OCSE determines that it is necessary and appropriate by the Office in regulations.

[50 FR 40144, Oct. 1, 1985; 50 FR 49392, Dec. 2, 1985; 59 FR 66249, Dec. 23, 1994]

§ 305.99 Notice and corrective action period.

(a) If a State is found by the Secretary on the basis of the results of the audit described in this part not to comply substantially with the requirements of title IV-D of the Act, as implemented by Chapter III of this title, the Office will notify the State in writing of such finding.

(b) The notice will:

(1) Cite the State for noncompliance, list the unmet audit criteria, apply a penalty and give the reasons for the Secretary's finding;

(2) Identify any audit criteria listed in § 305.20(a)(3), of this part that the State met only marginally [that is, in 75 to 80 percent of the cases reviewed for criteria in § 305.20(a)(3)];

(3) Specify that the penalty may be suspended if the State meets the conditions specified in paragraph (c) of this section; and

(4) Specify the conditions that result in terminating the suspension of the penalty as specified in paragraph (d) of this section.

(c) The penalty will be suspended for a period not to exceed one year from the date of the notice if the following conditions are met:

(1) Within 60 days of the date of the notice, the State submits a corrective action plan to the appropriate Regional Office which contains a corrective action period not to exceed one year from the date of the notice and which contains steps necessary to achieve substantial compliance with the requirements of title IV-D of the Act;

(2) The corrective action plan and any amendment are:

(i) Approved by the Secretary within 30 days of receipt of the corrective action plan; or

(ii) Approved automatically because the Secretary took no action within the period specified in paragraph (c)(2)(i) of this section; and

(3) The Secretary finds that the corrective action plan (or any amendment to it approved by the Secretary) is being fully implemented by the State and that the State is progressing to achieve substantial compliance with the unmet criteria cited in the notice.

(d) The suspension of the penalty will continue until such time as the Secretary determines that:

(1) The State has achieved substantial compliance with the unmet criteria cited in the notice and maintained substantial compliance with any marginally-met criteria cited in the notice;

(2) During the corrective action period, the State is not implementing its corrective action plan; or

(3) The State has implemented its corrective action plan but has failed to achieve substantial compliance with

the unmet criteria cited in the notice and maintain substantial compliance with any marginally-met criteria cited in the notice. For State plan-related criteria, this determination will be made as of the first full three-month period after the corrective action period. For performance indicator-related criteria, this determination will be made as of the first full four quarters following the end of the corrective action period.

(e) A corrective action plan disapproved under paragraph (c) of this section is not subject to appeal.

(f) Only one corrective action period is provided to a State in relation to a given criterion when consecutive findings of noncompliance are made on that criterion.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40145, Oct. 1, 1985; 50 FR 49392, Dec. 2, 1985, as amended at 51 FR 37732, Oct. 24, 1986; 55 FR 8468, March 8, 1990; 59 FR 66249, Dec. 23, 1994]

§ 305.100 Penalty for failure to have an effective support enforcement program.

(a) If the Secretary finds, on the basis of the results of the audit described in this part, that a State's program does not substantially meet the requirements in title IV-D of the Act, as implemented by Chapter III of this title, and the State does not achieve substantial compliance with those requirements identified in the notice within the corrective action period approved by the Secretary under § 305.99(c) of this part and maintain compliance in areas cited in the notice as marginally acceptable under

§ 305.99(b)(2) of this part, total payments to the State under title IV-A of the Act will be reduced for the period prescribed in paragraph (c) or (d) of this section by:

(1) Not less than one nor more than two percent of such payments for a period beginning in accordance with paragraph (c) or (d) of this section not to exceed the one-year period following the end of the suspension period;

(2) Not less than two nor more than three percent of such payments if the finding is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period not to exceed one year; or

(3) Not less than three nor more than five percent of such payments if the finding is the third or subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period.

(b) In the case of a State that has achieved substantial compliance with the unmet criteria identified in the notice and maintained substantial compliance with any marginally-met criteria identified in the notice within the corrective action period approved by the Secretary under § 305.99 of this part, the penalty will not be applied.

(c) In the case of a State whose penalty suspension ends because the State is not implementing its corrective action plan, the penalty will be applied as if the suspension had not occurred.

(d) In the case of a State whose penalty suspension ends because the State is implementing its corrective

action plan but has failed to achieve substantial compliance with the unmet criteria identified in the notice or maintain substantial compliance with any marginally-met criteria identified in the notice within the corrective action period approved by the Secretary under § 305.99 of this part, the penalty will be effective for any quarter that ends after the expiration of the suspension period until the first quarter throughout which the State IV-D program is in substantial compliance with the requirements of title IV-D of the Act.

(e) A consecutive finding under paragraph (a)(2) or (3) of this section occurs only when the State does not achieve substantial compliance with the same criterion or criteria.

(f) Any reduction required to be made under this section shall be made pursuant to § 205.146(d) of this title.

(g) The reconsideration of penalty imposition provided for by § 205.146(e) of this title shall be applicable to any reduction made pursuant to this section.

[50 FR 40145, Oct. 1, 1985; 50 FR 49392, Dec. 2, 1985; 55 FR 8468, Mar. 8, 1990]

(2)

Supreme Court, U.S.
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No. 95-1190

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

JOYCE McCLARAN, Director, Child Support Services, Tennessee Department of Human Services,

Petitioner,

v.

PATRICIA DAVIS, ELLA LARITA LILLARD, PATRICIA NORTHCUTT, and MARIETTA TURNER, on their own behalves and on behalf of all persons similarly situated,

Respondents.

On Petition for Writ of *Certiorari* to the Supreme Court of Tennessee

BRIEF OF *AMICI CURIAE* THE STATES OF ILLINOIS, ARIZONA, COLORADO, DELAWARE, FLORIDA, HAWAII, KENTUCKY, MAINE, MARYLAND, MASSACHUSETTS, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NORTH CAROLINA, NORTH DAKOTA, OREGON, UTAH, AND VERMONT IN SUPPORT OF PETITIONER

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No. 95-1190

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

JOYCE McCLARAN, Director, Child Support Services, Tennessee Department of Human Services,

Petitioner,

v.

PATRICIA DAVIS, ELLA LARITA LILLARD, PATRICIA NORTHCUTT, and MARIETTA TURNER, on their own behalves and on behalf of all persons similarly situated,

Respondents.

On Petition for Writ of *Certiorari* to the Supreme Court of Tennessee

BRIEF OF *AMICI CURIAE* THE STATES OF ILLINOIS, ARIZONA, COLORADO, DELAWARE, FLORIDA, HAWAII, KENTUCKY, MAINE, MARYLAND, MASSACHUSETTS, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NORTH CAROLINA, NORTH DAKOTA, OREGON, UTAH, AND VERMONT IN SUPPORT OF PETITIONER

STATEMENT OF INTEREST

The *amici curiae* States of Illinois, Arizona, Colorado, Delaware, Florida, Hawaii, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Oregon, Utah, and Vermont, submit this brief pursuant to Supreme Court Rule 37 in support of the State of Tennessee requesting that a Writ of Certiorari be granted to review the judgment entered by the Supreme Court of Tennessee in *Davis v. McClaran*, 909 S.W. 2d 412 (Tenn. 1995).

The courts are divided on the issue of whether individuals may bring actions against state actors pursuant to 42 U.S.C. §1983 to enforce claims to child support services allegedly conferred by Title IV-D of the Social Security Act, 42 U.S.C. §651 *et seq.*[1] The *Davis* court found

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[1] In the broadest formulation, the following cases have held that Title IV-D creates enforceable rights and that §1983 is available to challenge a state's IV-D program. *Albiston v. Maine Commissioner of Human Services*, 7 F.3d 258 (1st Cir. 1993); *Davis v. McClaran*, 909 S.W.2d 412 (Tenn. 1995). See also *Freestone v. Cowan*, 68 F.3d 1141 (9th Cir. 1995); *Howe v. Ellenbacher*, 8 F.3d 1258 (8th Cir. 1993); *Behunin v. Jefferson County Dept. of Social Services*, 744 F.Supp. 255 (D. Colo. 1990). But compare the following cases holding that Title IV-D does not create enforceable rights. *Wehunt v. Ledbetter*, 875 F.2d 1558 (11th Cir. 1989); *Mason v. Bradley*, 789 F. Supp. 273 (N.D. Ill. 1992); *Oliphant v. Bradley*, No. 91 C 3055, 1992 WL 153637 (N.D. Ill. Feb. 19, 1992). At least one court has adopted a middle of the road position, finding that enforceable rights exist, but limiting use of §1983 to actions to improve the state's IV-D performance to a level of substantial compliance. *King v. Bradley*, 829 F. Supp. 989 (N.D. Ill. 1993). See also *Carelli v. Howser*, 923 F.2d 1208 (6th Cir. 1991) (finding the existence of enforceable rights but abstaining from hearing IV-D challenge in light of Secretary's remedial actions). The

(continued...)

that an individual plaintiff may bring an action pursuant to §1983 to enforce rights created not by federal statute but by federal regulation. The Tennessee Supreme Court decision, and the other cases which are in accord, substantially broaden the scope of state liability under §1983 by allowing courts to find that federal regulations *ab initio* create enforceable rights to sue state actors in federal court.

The decision of the Tennessee Supreme Court, if followed by other courts, will dramatically alter the states' responsibilities for child support enforcement. The mandate of Title IV-D, and the responsibilities which the states undertake as part of their contractual relationship with the federal government, is that the states operate a child support enforcement program which is in "substantial compliance" with federal regulations. 42 U.S.C. §602 (a) (27).

In the particular context of cases finding that individuals have enforceable rights to sue for violations of child support enforcement regulations, there will be an increased burden on the federal courts, since any individual who claims not to have received some child support enforcement service will have the ability to bring an action in federal court. The state IV-D agencies, and the state courts, would be subject to varying orders from state and federal courts to "hurry up" or to engage in a court-created process in each of these individual cases. There would be a concomitant increase in each state's

---

[1] (...continued)
State of Arizona plans to file a petition for writ of certiorari in *Freestone v. Cowan*, 68 F.3d 1141 (9th Cir. 1995), within the next few weeks.

cost of providing child support enforcement services. Ultimately, this would divert fiscal resources from the actual collection of child support and impose enormous financial and programmatic burdens on state IV-D programs. This ruling would open the door for multitudinous suits to determine individual rights created by federal regulation.

SUMMARY OF ARGUMENT

At issue before this Court is the ruling of the Tennessee Supreme Court holding that a plaintiff may bring an action pursuant to §1983 for individual relief to enforce the State's "direct obligations" to that plaintiff under Title IV-D, and that this right exists even if the State is in "substantial compliance" with the requirements of Title IV-D. The lower courts are in conflict as to the availability of a §1983 action to enforce regulations promulgated under Title IV-D. The enforceable rights analysis of the Tennessee Supreme Court reflects a disregard of the governing principles expressed by this Court in *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981), and *Suter v. Artist M.*, 503 U.S. 347 (1992). Moreover, the Tennessee Supreme Court failed to consider whether plaintiffs had sustained a personal injury that would likely be redressed by the requested relief. The *Davis* court failed to examine whether there is a nexus between the state's alleged failure to operate a IV-D program in substantial compliance with federal law and plaintiffs' failure to receive child support from absent parents.

ARGUMENT

I.

THE TENNESSEE SUPREME COURT'S ENFORCEABLE RIGHTS ANALYSIS IS FLAWED. CONGRESS NEVER INTENDED TITLE IV-D OF THE SOCIAL SECURITY ACT TO CREATE ENFORCEABLE RIGHTS TO CHILD SUPPORT ENFORCEMENT SERVICES.

Legislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the states agree to comply with certain unambiguous conditions. *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1, 17 (1981) (hereafter "*Pennhurst*"); *Suter v. Artist M.*, 503 U.S. 347, 356 (1992). Accordingly, unless states voluntarily and knowingly agree to spend state money to uphold new rights as a condition of receiving federal funds, courts cannot use §1983 to require states to fund new rights. *Pennhurst*, 451 U.S. at 17-18.

In the statutory scheme of child support enforcement, Congress unambiguously stated that it will suspend a state IV-D program's federal funding only if, as a result of an audit conducted pursuant to 42 U.S.C. §652(a) (4), the Secretary of Health and Human Services finds the program "not to have complied substantially" with the requirements of Title IV-D and its implementing regulations. 42 U.S.C. §603 (h) (1). Furthermore, Congress insisted that a state lose its federal funding only if that state refuses to undertake necessary changes to correct its child support enforcement program once the Secretary makes a finding that the program fails to substantially comply with Title IV-D. S. Rep. No. 98-387, 98th Cong., 2d Sess. 33, *reprinted in* 1984 U.S.C.C.A.N. 2429.

In *Davis*, the Tennessee Supreme Court held that §1983 can be used to force states to achieve a higher

level of compliance with Title IV-D than required to receive federal funding. *Davis*, 909 S.W.2d at 420. By defining the rights that Congress allegedly created in enacting Title IV-D without regard to the contractual relationship between the state and the federal government as delineated by the clear and unambiguous language of the statute, the Tennessee Supreme Court failed to properly analyze whether Title IV-D creates enforceable rights.

In 1984, Congress by statute delegated authority to the Secretary to define what level of performance was required to comply substantially with the federal mandate to operate an effective and efficient IV-D program. In response, the Secretary by regulation added new program performance indicators to the IV-D internal enforcement scheme. The new indicators were designed to compel states to achieve both AFDC cost recovery and welfare cost avoidance by non-AFDC collections, and to set minimum cost-effectiveness standards for state IV-D operations. 45 C.F.R. §§305.20(a), 305.98. At the same time, the Secretary of Health and Human Services developed new program compliance criteria to define "substantial" compliance, as required by the statutory amendment. 42 U.S.C. §603(h) (1).

The Secretary has set a 75% substantial compliance standard by regulation. There has been no legislative response which would require any different or higher substantial compliance standard. This is strong evidence that Congress did not intend to confer an individual enforceable right to IV-D services which comply with federal requirements.

The 75% audit compliance requirement reflects that neither the Secretary nor Congress expects the states to run perfect child support enforcement programs. The

Secretary recently promulgated new regulations redefining substantial compliance to place greater focus on performance and outcomes. 45 C.F.R. §§303, 305. These amendments were made in part to emphasize that what was most important was the collection of child support payments. *See* Child Support Enforcement Program: Paternity Establishment and Revision of Child Support Enforcement Program and Audit Regulations, 59 Fed. Reg. 66204, 66244-66245 (1994); 45 C.F.R. §305.20(a)(4). This illustrates the evolving nature of federal oversight of the states' child support enforcement efforts. The Secretary, without need for congressional approval, makes changes in what is required for states to be in substantial compliance based on her experience in administering the program.

The Tennessee Supreme Court held that "a plaintiff may bring an action pursuant to §1983 to enforce the state's 'direct obligations' to him or her under Title IV-D; and that this right is not dependent upon whether the State is in 'substantial compliance' with the requirements of Title IV-D for purposes of the Secretary's audit." *Davis v. McClaran*, 909 S.W.2d 412, 420 (1995). These "direct obligations" are found only in regulations promulgated by the Secretary.

The concerns of the dissent in *Wright v. Roanoke* apply squarely to this case:

> I am concerned, however, that lurking behind the Court's analysis may be the view that, once it has been found that a statute creates some enforceable right, *any* regulation adopted within the purview of the statute creates rights enforceable in federal courts, regardless of whether Congress or the promulgating agency ever contemplated such a result.

Wright v. Roanoke, 479 U.S. 418, 438 (1987) (O'Connor, J., dissenting) (emphasis in original). The *Davis* decision creates rights never intended by Congress or the Secretary.

If Title IV-D creates enforceable rights, they are unique and novel. Such "rights" would not be created by Congress at all, but by the Secretary of Health and Human Services in the regulations defining substantial compliance, which may set any reasonable compliance level consistent with the statutes and their goals. Under the Tennessee Supreme Court's decision, the Secretary would be given the power to create and to extinguish federal rights.

II.

THE TENNESSEE SUPREME COURT FAILED TO ANALYZE WHETHER CUSTODIAL PARENTS HAVE STANDING TO SUE FOR AN ALLEGED VIOLATION OF TITLE IV-D REQUIREMENTS.

Article III limits resolution of alleged violations of federal rights to litigants who have standing.

> The judicial power of the United States defined by Art. III is not an unconditioned authority to determine the constitutionality of legislative or executive acts. The power to declare the rights of individuals and to measure the authority of governments, this Court said 90 years ago, "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy."

Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 471 (1982), *quoting Chicago & Grand Trunk R. Co. v. Wellman*, 143 U.S. 339, 345 (1892). Plaintiffs have standing

only if they allege that they have suffered a personalized injury fairly traceable to the defendant's allegedly unlawful conduct that is likely to be redressed by the requested relief. *Id.* The Tennessee Supreme Court wholly failed to consider whether plaintiffs had standing.

The party invoking federal jurisdiction bears the burden of establishing that the constitutional elements of standing have been met. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). One of the essential elements of standing is that the plaintiff must show that there is a causal connection between his injury and the conduct complained of. *Id.* at 560. The United States Court of Appeals for the Eleventh Circuit has reasoned that the nexus between custodial parents' injury and the child support enforcement program's failure to comply with Title IV-D is "attenuated at best since the injury is directly caused by a third party who is not a party to the lawsuit, namely the absent father." *Wehunt v. Ledbetter*, 875 F.2d 1558, 1567 (11th Cir. 1989).

Similarly, the *Wehunt* court also found that there was a clear lack of redressability because, as plaintiffs conceded, "even rigorous enforcement of child support laws does not guarantee that any father will be located and if so that any child support will be collected." *Wehunt*, 875 F.2d at 1567. Where a plaintiff's injury arises from the government's allegedly unlawful failure to control the behavior of third parties not before the court, establishing causation is nearly impossible. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). *See also Linda R.S. v. Richard D.*, 410 U.S. 614, 618 (1973); *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976); *Allen v. Wright*, 468 U.S. 737, 751 (1984).

The Tennessee Supreme Court failed to examine whether there is a nexus between the defendant's alleged failure to operate a IV-D program in substantial compliance with federal law and plaintiffs' failure to receive child support from absent parents. It should be clear, though, that it is wholly speculative as to whether plaintiffs' situations will improve with the Tennessee Supreme Court having ruled in their favor. This Court should grant the Petition in order to affirm that standing is a threshold requirement that all litigants must meet.

CONCLUSION

For the foregoing reasons, amici respectfully urge this Court to grant the Petition for Writ of Certiorari.

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EDITOR'S NOTE

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No. 95-1190

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1995

******

JOYCE McCLARAN, Director, Child Support Services,
Tennessee Department of Human Services,

Petitioner,

v.

PATRICIA DAVIS, ELLA LARITA LILLARD,
PATRICIA NORTHCUTT, and MARIETTA TURNER,
on their own behalves and on behalf of
all persons similarly situated,

Respondents.

*****

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 39, Respondents Patricia Davis, Ella Larita Lillard, Patricia Nortcutt, and Marietta Turner ask for leave to file the attached Brief in Oppositon without prepayment of costs and to proceed in forma pauperis in this Court. Respondents sought and received leave to proceed in forma pauperis in the Chancery Court for Davidson County, Tennessee and in the Tennessee Court of Appeals. Respondents were appellees in the Supreme Court of Tennessee and were not required

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*****

On Petition For A Writ Of Certiorari To
The Supreme Court of Tennessee

*****

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Respondents adopt Petitioner's statement of Questions Presented for Review.

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JURISDICTION

This Court lacks jurisdiction because the decision below merely denies Petitioner's Motion to Dismiss and is not a final judgment. Petitioner asserts that this Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) which provides as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or the statutes of, or any commission held or authority exercised under, the United States.

In Flynt v. Ohio, 451 U.S. 619, 620, 101 S.Ct. 1958, 1959, 68 L.Ed.2d 489 (1981), this Court held:

> In general, the final-judgment rule has been interpreted "to preclude reviewability . . . where anything further remains to be determined by a State court, no matter how dissociated from the only federal issue that has finally been adjudicated by the highest court of the State."

This Court has repeatedly held that state court decisions remanding a case for trial or re-trial are not final judgments subject to review. O'Dell v. Espinoza, 456 U.S. 430, 102 S.Ct. 1865, 72 L.Ed.2d 237 (1982); San Diego Gas and Electric v. City of San Diego, 450 U.S. 621, 633, 101

S.Ct. 1287, 1294, 67 L.Ed.2d 551 (1981); Southern Pacific Company v. Gileo, 351 U.S. 493, 496, 76 S.Ct. 952, 955, 100 L.Ed. 1357 (1956).

Although the present case was filed more than three years ago, the first witness has yet to be called and the first factual dispute resolved. The decision of the Tennessee Supreme Court does no more than allow plaintiffs an opportunity to prove the factual allegations of their complaint. Although the nature of the federal question requiring decision may change dramatically, nothing will prevent petitioner from seeking review, including review in this Court, if petitioner is dissatisfied with the ruling of the trial court.

Respondents are aware that this Court has recently taken a practical approach to determining whether particular judgments are "final" for purposes of review. In Cox Broadcasting Corporation v. Cohn, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975), this Court identified four categories of cases where a judgment may be treated as final despite the necessity for further proceedings in state court. Those categories include cases where the further state court proceedings amount to mere formalities, cases where it can be said for certain that further state court proceedings will neither change the federal questions requiring review nor render review unnecessary, cases where review of federal questions will be unavailable following completion of the state court proceedings, and cases where the unavailability of immediate review will seriously erode a federal policy. Petitioner has not argued that the present case falls within any of these exceptional categories and there are no exceptional circumstances which would justify review at this stage of the proceedings.

There are a number of possible outcomes to the further state court proceedings ordered by the Tennessee Supreme Court which would dramatically affect the nature and necessity for review in this Court. Most obviously, the trial court might find that each respondent has received all services

services required to be provided by Title IV-D. If so, there would be no necessity for this Court to determine whether Title IV-D creates enforceable rights, whether Congress has precluded a § 1983 remedy, or whether more than substantial compliance is required. Conversely, the trial court might find, as alleged by respondents, that respondents have not received required services and that the IV-D program is not in substantial compliance with program regulations. In that event, there would be no necessity for this Court to determine whether injunctive relief is available for individual program violations even when a program is in substantial compliance. While it will generally be true that a party whose motion to dismiss has been denied by state courts will prefer immediate review in this Court, petitioner's inconvenience has never been recognized as a basis for accepting as final a judgment which contemplates further state court proceedings. There is no federal policy which will be seriously eroded by allowing this case to continue in state court until a final judgment is issued. The Petition for Writ of Certiorari should be dismissed because this Court lacks jurisdiction.

STATEMENT OF THE CASE

Respondents adopt Petitioner's Statement of the Case except that respondents would refer the Court to the Complaint filed in this action for a fuller statement of the allegations made by respondents. As petitioner correctly notes, at this stage in the proceedings all allegations of the Complaint must be taken as true. Petition for Writ of Certiorari at page 2. A copy of the Complaint is attached as an appendix to Respondents' Brief in Opposition (App. 1 - App. 17).

REASONS FOR DENYING THE PETITION

Petitioner asks this Court to grant a writ of certiorari in order to resolve the alleged "fundamental division and confusion" of the lower courts regarding the enforceability of Title IV-D of the Social Security Act in an action under 42 U.S.C. § 1983. Petitioner further argues that the

decision of the Tennessee Supreme Court in this case conflicts with the holdings of this Court in cases involving the enforcement of statutes enacted by Congress pursuant to its spending power. Petition for Writ of Certiorari at pp. 6-7. As will be argued below, there is no significant conflict between the decision of the Tennessee Supreme Court in this action and the decisions of the federal circuit courts and there is no conflict between the decision of the Tennessee Supreme Court in this case and the decisions of this Court.

A. There is No Significant Conflict Between The Decision Below The Decisions Of The Federal Circuit Courts

Although petitioner formally raises only a single question for review, Petition for Certiorari, p. i, she goes on to argue that review is appropriate because of a conflict in lower court decisions on the issue on whether Title IV-D of the Social Security Act creates enforceable rights, whether Congress has indicated an intent to preclude enforcement of Title IV-D in a § 1983 action, and whether states are required to comply with Title IV-D in all cases or in substantially all cases. Respondents will address each of these issues separately.

1. Title IV-D Creates Enforceable Rights

In Pennhurst State School v. Halderman, 451 U.S. 1, 27, 101 S.Ct. 1531, 1545, 67 L.Ed.2d 694 (1981), this Court held that a federal statute must impose mandatory duties, rather than vague preferences, upon a state in order to create rights enforceable in an action pursuant to 42 U.S.C. § 1983. In this case, the Tennessee Supreme Court held that Title IV-D of the Social Security Act and its implementing regulations impose clear and mandatory duties on states which choose to accept federal funding and that those duties are enforceable in a § 1983 action. The precise issue passed upon by the Tennessee Supreme Court has also been decided by the United States Courts of Appeal

for the First, Sixth, Eighth, Ninth, and Eleventh Circuits. There is virtually unanimous agreement among the lower courts that Title IV-D creates enforceable rights.

The earliest decision on point, and the decision relied upon by petitioner as creating a conflict, is the decision in Wehunt v. Ledbetter, 875 F.2d 1558 (11th Cir. 1989), rehg. en banc denied, 888 F.2d 1398 (11th Cir. 1989), cert. denied, sub nom., Brown v. Ledbetter, 494 U.S. 1027, 110 S.Ct. 1472, 108 L.Ed.2d 609 (1990). In that case, the court considered whether Title IV-D of the Social Security Act creates rights which are enforceable in an action pursuant to 42 U.S.C. § 1983. The court analyzed the issue under the framework created by this Court in Cort v. Ash, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975), for determining whether a federal statute creates an implied private cause of action. The court focused on the Cort requirement that a plaintiff seeking to enforce a statute be one of the class for whose especial benefit the statute was enacted. Finding that Title IV-D was not intended to benefit custodial parents, but was rather intended to benefit the public by recovering public funds paid as welfare benefits, the court held that Title IV-D does not create rights enforceable in a § 1983 action. Wehunt, supra, 875 F.2d at 1563-1566.

The holding of Wehunt, supra, has never been followed by any other federal court of appeals or by any state supreme court and has been explicitly rejected by four federal circuit courts. In Carelli v. Howser, 923 F.2d 1208, 1211 (6th Cir. 1991), another case seeking to enforce Title IV-D in a § 1983 action, the court held:

> We disagree, at least in part, with the conclusion reached in Wehunt. The court in Wehunt, as do the parties here, seemed to foreclose the possibility that the statute could have more than one class of beneficiaries. We see no reason to conclude that the statute must be read to protect needy families with

> children to the exclusion of protecting the public fisc or vice versa. . . .
>
> In sum, it seems clear that the classes as represented by the plaintiffs here are beneficiaries in fact of Title IV-D and were intended by Congress to be such.

In Albiston v. Maine Commissioner of Human Services, 7 F.3d. 258, 268 (1st Cir. 1993), the court accepted the state's concession that custodial parents are the intended beneficiaries of Title IV-D and held that the statute created enforceable rights:

> Maine concedes, for purposes of this appeal, that the plaintiff class is comprised of "intended beneficiaries" of the requirement that Title IV-D child-support be "promptly" distributed. Although the Eleventh Circuit has held otherwise, see Wehunt v. Ledbetter, 875 F.2d 1558, 1565-66 (11th. Cir. 1989) (Title IV-D's collection provisions primarily intended to benefit "the public fisc," not individual claimants, and therefore do not give rise to enforceable private rights), we accept Maine's concession, which conforms in any event with the conclusion reached by most courts that have considered the issue, and with our prior characterizations of Title IV-D in dictum.

While noting the contrary holding of Wehunt, supra, the court in Howe v. Ellenbecker, 8 F.3d 1258, 1262 (8th Cir. 1993), cert. denied 114 S.Ct. 1373 (1994), held that Title IV-D is intended to benefit custodial parents and creates rights enforceable in a § 1983 action. Finally, and most recently, in Freestone v. Cowan, 68 F.3d 1141, 1146-1147 (9th Cir. 1995), the court noted the contrary holding of Wehunt, supra, but held in agreement with the majority of courts that Title IV-D does create rights enforceable in a § 1983 action.

Although the great weight of authority supports the holding of the Tennessee Supreme Court in this action, petitioners would be correct in asserting that there is some small conflict among the lower courts on this issue if the decision in Wehunt, supra, remained good law. Respondents would respectfully submit that Wehunt is inconsistent with a later decision of this Court, has not been followed by the Eleventh Circuit Court of Appeals in any subsequent case, and would not be followed in the future.

As noted above, the court in Wehunt, supra, analyzed the availability of a § 1983 action following the framework set out by this Court in Cort v. Ash, supra. Judge Clark dissenting, accurately predicted that this reliance would be held erroneous:

> Instead of placing the burden of proof on the defendant in this case, the majority relies at least partially on case law concerning whether a private cause of action can be implied under a federal statute. In Cort v. Ash, 422 U.S. 68, 78, 95 S.Ct. 2080, 2088, 45 L.Ed.2d 26 (1975), the Supreme Court announced a strict four part test to determine whether Congress intended a private cause of action. Under the Cort test, however, the plaintiff must affirmatively prove that Congress intended to allow a private cause of action.
>
> The majority's confusion of the two different lines of case law is extremely significant in this case. The factors considered under each test are similar. But, the fact that the burden of proof is on a state in a § 1983 suit and on a plaintiff in an implied cause of action suit is of fundamental importance. Therefore to the extent that the majority's reliance on the implied right of action cases reflects a misunderstanding of the burden of proof on this issue, the foundation of the majority's analysis evaporates.

Wehunt v. Ledbetter, 875 F.2d at 1568 (Judge Clark dissenting).

One year after the decision in Wehunt, supra, this Court rendered its decision in Wilder v. Virginia Hospital Association, 496 U.S. 498, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990), holding that the Boren Amendment to Title XIX of the Social Security Act creates rights enforceable in a § 1983 action. This Court explicitly noted that the Cort v. Ash, analysis should not be applied in determining whether a statute is enforceable in a Section 1983 action:

> This is a different inquiry than that involved in determining whether a private right of action can be implied from a particular statute. See Cort v. Ash, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975). In implied right of action cases, we employ the four-factor Cort test to determine "whether Congress intended to create the private remedy asserted" for the violation of statutory rights. [Citations omitted] The test reflects a concern, grounded in separation of powers, that Congress rather than the courts controls the availability of remedies for violations of statutes. [Citations omitted] Because § 1983 provides an "alternative source of express congressional authorization of private suits," Middlesex County Sewerage Authority v. National Sea Clammers Assn., 453 U.S. 1, 19, 101 S.Ct. 2615, 2625, 69 L.Ed.2d 435 (1981), these separation-of-powers concerns are not present in a § 1983 case. Consistent with this view, we recognize an exception to the general rule that § 1983 provides a remedy for violation of federal statutory rights only when Congress has affirmatively withdrawn the remedy.

Wilder, supra, 496 U.S. at 508 fn. 9, 110 S.Ct. at 2517 fn.9. At a minimum, the Court of Appeals for the Eleventh Circuit would need to reexamine the continued validity of the Wehunt analysis in light of this Court's decision in Wilder. It is perhaps significant that the § 1983 analysis of Wehunt

has never been subsequently relied upon by the Eleventh Circuit Court of Appeals or by a district court within the Eleventh Circuit. It is unnecessary for this court to grant certiorari in order to resolve any conflict over the question of whether Title IV-D creates enforceable rights.

2. The Lower Courts Are In Agreement That Congress Has Not Precluded Enforcement Of Title IV-D In A §1983 Action

In this case, the Tennessee Supreme Court held that the administrative audit and oversight provisions of Title IV-D do not indicate a congressional intent to preclude enforcement of that statute in an action pursuant to 42 U.S.C. § 1983. That holding is in accord with the holdings of three federal circuit courts. In Howe v. Ellenbecker, 8 F.3d 1258, 1263 (8th Cir. 1993), cert denied 114 S.Ct. 1373 (1994), the court held: "The federal government's authority to audit and impose monetary sanctions does not constitute 'comprehensive' remedies. . . . We see no enforcement provisions in Title IV-D that show a congressional intent to foreclose these Indian women and children from asserting private remedies." In Albiston v. Maine Commissioner of Human Services, 7 F.3d 258, 269 (1st Cir. 1993), the court held:

> In our view, the OCSE administrative enforcement scheme, authorizing penalties against participating States for 'substantial noncompliance,' seems intended to protect important federal interests, including prompt disbursement of federal funds to needy AFDC recipients as mandated by Congress, by insuring that overall performance by the participating State does not fall below federally-prescribed levels. The private remedy afforded by § 1983, on the other hand, safeguards the individual AFDC recipient's interests in the timely receipt of the mandated federal benefits. Though coexistent, at best these interests overlap imperfectly.

Most recently, in Freestone v. Cowan, 68 F.3d 1141, 1151-1156 (9th Cir. 1995), the court reviewed all of the reported decisions on point and the decisions of this Court interpreting similar statutory schemes. The court noted that the Title IV-D audit provisions allowed for no more than a small reduction in the amount of federal funds provided to a state for payment of AFDC benefits. The audit cannot result in a direct requirement that the state comply with its statutory obligations. The court found no congressional intent to preclude enforcement of Title IV-D in a §1983 action.

Petitioner claims a conflict between the federal circuit courts citing Carelli v. Howser, 923 F.2d 1208 (6th Cir. 1991) for the proposition that Congress has precluded enforcement of Title IV-D in a § 1983 action. Petition for Writ of Certiorari, p. 6 fn.4 and p. 15. That citation is not consistent with a careful reading of the Carelli decision or with subsequent interpretations of that decision by the Court of Appeals for the Sixth Circuit.

Carelli, supra, was a § 1983 action brought by custodial parents seeking to enforce the provisions of Title IV-D. The court, however, put great stress on facts not present in this case. The court noted that the Secretary of Health and Human Services had completed an audit finding that the IV-D program was out of compliance with federal law, had obtained and approved a corrective action plan from the state, and had imposed a financial penalty against the state in the amount of seven million dollars. In the present case, the federal government has taken no administrative actions to remedy the alleged violations of Title IV-D. Complaint, ¶ 42, App. 8. The Carelli, court characterized its holding as follows:

> In many respects, what we decide today is akin to an abstention order, although we do not label it as such. It does share with abstention orders the characteristic that action is not necessarily forever barred. It is

> delayed pending the outcome of another proceeding, a proceeding we feel Congress intended under these circumstances to take precedence.

Carelli, supra, 923 F.2d at 1216. Contrary to petitioner's assertion, the court clearly did not find that § 1983 actions to enforce Title IV-D are precluded:

> We find it unnecessary to decide whether § 1983 can ever be used as a means of securing relief for an alleged statutory violation of Title IV-D. Our holding is much narrower than that. We simply conclude, under the facts here, that plaintiffs have failed to state a claim upon which relief can be granted.

Carelli, supra, 923 F.2d at 1213.

In a later decision, the Sixth Circuit Court of Appeals explicitly indicated that a provision allowing for the withholding of federal funds is insufficient to indicate a congressional intent to preclude enforcement of a statute in a § 1983 action: "In fact, the Act contains no provision for private judicial or administrative enforcement. That the Act gives the Administrator of the Office of Juvenile Justice and Delinquency Prevention the power to terminate or withhold funding does not manifest congressional intent to foreclose reliance on § 1983 to vindicate federal rights." Horn by Parks v. Madison County Fiscal Court, 22 F.3d 653, 658 (6th Cir. 1994). The limited scope of the Carelli holding was explicitly recognized by the court in Wood v. Tompkins, 33 F.3d 600, 612 (6th Cir. 1994):

> However, Defendant has misread our Carelli decision, in which we made it clear that, with regard to the statute at issue in that case, "we do not conclude that private action is foreclosed under all circumstances by

> the comprehensiveness of the remedial process." [Citation and footnote omitted.] Nothing in Carelli remotely suggests that mere oversight by the Secretary in and of itself constitutes a remedial scheme so comprehensive as to foreclose a private remedy pursuant to § 1983; such a suggestion would not only be implausible, but would also be contrary to the explicit holding of Wilder.

Contrary to petitioner's assertion, the holding of the Tennessee Supreme Court that Congress has not precluded enforcement of Title IV-D in a § 1983 action does not conflict with the holding of any federal court of appeals.

3. The Courts Are In Agreement Regarding The Right Of An Individual Custodial Parent To Receive Child Support Services Mandated By Title IV-D

In this case, the Tennessee Supreme Court held that an individual custodial parent has a right to receive child support services which Title IV-D requires to be provided in "all cases" even though the statute protects a state against the imposition of financial penalties as long as the state is in "substantial compliance" with the statute. This holding is fully consistent with the only other decision directly on point by a federal circuit court or a state supreme court. In Albiston v. Maine Commissioner of Human Services, 7 F.3d 258, 269 (1st Cir. 1993), the court held that a § 1983 remedy was necessary precisely because the state would otherwise remain free to violate the statute in individual cases while maintaining substantial compliance.

The decision below is also supported by decisions from two other federal circuit courts interpreting similar statutory provisions. In Withrow v. Concannon, 942 F.2d 1385, 1387 (9th Cir. 1991), the court considered a claim that individual injunctive relief was not available to enforce Title

IV-A (AFDC program) of the Social Security Act because the statute protected the state from imposition of a financial penalty as long as the state was in substantial compliance with the statute. The court held:

> The funding standard is not intended to be the measure of what the regulations require; it is intended to measure how great a failure to meet those requirements should cause funds to be cut off. The language of federal regulations is unequivocal, and states that a decision "shall" or "must" be made within the specified number of days. The regulations' commands effectuate the purpose of the federal categorical programs, to render reasonably prompt assistance to persons in dire need. From the standpoint of the applicants or recipients who are denied hearings and decisions within the time mandated by federal regulations, it is no comfort to be told that there is no federal remedy because the state is in "substantial compliance" with the federal requirements.

Similarly, in Crawford v. Janklow, 710 F.2d 1321, 1326 (8th Cir. 1983), the court rejected an argument that a statutory provision conditioning federal funding on substantial compliance with program standards precluded injunctive relief: "The 'withholding of funds' remedy is not couched in terms of exclusivity, and that remedy is woefully inadequate as to persons in dire need of the proper distribution of home energy assistance funds rather than the withholding of funds altogether. Furthermore, the home energy assistance legislation is geared toward reduced federal administrative supervision, which fully comports with the recognition of private remedies in federal court without unnecessary intervention by the Secretary of Health and Human Services."

Although this Court has not directly addressed the issue, the result reached by this Court in leading cases is certainly consistent with the decision below in the present case. In Maine v. Thiboutot, 488 U.S. 1, 100 S.Ct. 2502, 65 L.Ed.2d 555 (1980), this Court held that Title IV-A of the Social Security Act is enforceable in a § 1983 action. The Court did not assign any significance to a statutory provision protecting the state from the imposition of a financial penalty absent "a failure to comply substantially" with the statute. 42 U.S.C. § 604(a). Similarly, in Wilder v. Virginia Hospital Association, 496 U.S. 498, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990), the Court held that a section of Title XIX of the Social Security Act is enforceable in a § 1983 action. The Court noted the statutory provision for administrative enforcement, 42 U.S.C. § 1396c, but attached no significance to the statutory language conditioning a loss of funding on "a failure to comply substantially" with the statute. See, Wilder v. Virginia Hospital Association, supra, 496 U.S. at 521, 110 S.Ct. at 2524.

Petitioner cites Freestone v. Cowan, 68 F.3d 1141 (9th Cir. 1995) for the proposition that "plaintiffs use of § 1983 [is] limited in scope to enjoining a state to improve overall Title IV-D program performance to a level of substantial (i.e., 75%) compliance." Petition for Writ of Certiorari, at p. 6. This is simply a mistaken citation. In fact, the Freestone court strongly indicated in dicta that substantial compliance would be inadequate, but reserved judgment:

> We do not agree that Withrow, can be so easily distinguished, but we need not decide that point here. The question whether federal law precludes an individual remedy during periods in which the state is in "substantial compliance", although an interesting one, is not before us. The district court made no factual findings as to the level of Arizona's compliance but rather disposed of this case on the legal ground

> that a § 1983 action is generally unavailable in Title IV-D cases.

Freestone, supra, 68 F.3d at 1151. Contrary to petitioner's assertion, there is no conflict between the decision below and the decisions of other federal circuit courts or state supreme courts.

B. The Decision Below is Not Inconsistent With the Decisions of This Court

Petitioner argues that the Tennessee Supreme Court disregarded the controlling decisions of this Court by relying upon duly promulgated regulations rather than statutory provisions to find the existence of enforceable rights. As explained below, petitioner misreads both the statute and the holdings of this Court.

With respect to the statute, petitioner quite naturally focuses on statutory language prescribing the circumstances in which a failure to comply with the statute will result in a loss of federal funds. Petitioner correctly notes that federal funds will not be withheld unless a state program is not in substantial compliance with program requirements and is not operating under an approved corrective action plan. 42 U.S.C. § 603(h)(1), (2). Petition for Writ of Certiorari, App. 66-67. Somewhat inconsistently, but not surprisingly, petitioner relies upon a regulation defining substantial compliance as compliance in 75% of all cases, 20 C.F.R. § 305.20(a)(3), Petition for Writ of Certiorari, App. 235, rather than upon the statutory language which states:

> . . . a state which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any non-compliance with such requirements is of a technical nature which does

> not adversely affect the performance of the child support enforcement program.

42 U.S.C. § 603(h)(3), Petition for Writ of Certiorari, App. 68-69. If the statute said no more on the subject of program performance, petitioner would be correct in suggesting that regulations requiring more than substantial compliance exceeded statutory authority. In fact, the statute clearly and unambiguously requires the establishment of program standards by regulation and requires that the state comply with those regulations.

Pursuant to 42 U.S.C. § 652(a)(1), Petition for Writ of Certiorari, App. 71-72, the Secretary of Health and Human Services is required to establish state program standards for locating absent parents, establishing paternity, and collecting child support which are adequate to assure that child support programs will be effective. Pursuant to 42 U.S.C. § 652 (h), Petition for Writ of Certiorari, App. 82, the program standards established by the Secretary must impose upon participating states time limits for responding to requests for assistance, locating absent parents, establishing paternity and support, and enforcing support orders.

Congress did not require the rule making activity described above as an idle exercise. Rather, pursuant to 42 U.S.C. § 654 (1), Petition for Writ of Certiorari, App. 83, a state choosing to participate in the Title IV-A program must have a child support enforcement plan in effect in all political subdivisions of the state. Pursuant to 42 U.S.C. § 654 (4), (6), Petition for Writ of Certiorari, App. 83-86, a participating state must provide child support services to individuals receiving AFDC or Medicaid benefits and to individuals making a request for child support assistance. Most significantly and unambiguously, 42 U.S.C. § 654 (13), Petition for Writ of Certiorari, App. 88, requires "that the State will comply with such other requirements and standards

as the Secretary determines to be necessary to the establishment of an effective program for locating absent parents, establishing paternity, obtaining support orders, and collecting support payments." If petitioner is truly uncertain as to her obligation to comply with regulations implementing Title IV-D, her confusion results from a failure to read the statute rather than any ambiguity in the statute.

Petitioner misreads the holdings of this Court when she asserts that the existence of enforceable rights must be determined based solely upon statutory language rather than the requirements of validly issued regulations. In Wright v. Roanoke Redevelopment and Housing Authority, 479 U.S. 418, 107 S.Ct. 766, 93 L.Ed.2d 781 (1987), this court considered whether a statute requiring that public housing tenants pay 30% of their adjusted income as rent created an enforceable right on behalf of tenants claiming that their rent included payment for normal utility usage. The Court noted that despite the absence of any statutory provision regarding utility payments, regulations issued by the United States Department of Housing and Urban Development defined "rent" as including the cost of reasonable utility usage. The Court found that the statute together with the implementing regulations was sufficient to create an enforceable right:

> Respondent nevertheless asserts that the provision for a "reasonable" allowance for utilities is too vague and amorphous to confer on tenants an enforceable "right" within the meaning of § 1983 and that whole matter of utility allowances must be left to the discretion of the PHA, subject to supervision by HUD. The regulations, however, defining the statutory concept of "rent" as including utilities, have the force of law [citation omitted], they specifically set out guidelines that the PHAs were to follow in establishing utility allowances, and they require notice to tenants and an opportunity to comment on proposed allowances. In our view, the benefits Congress intended to confer on tenants are sufficiently specific and definite to qualify

> as enforceable rights under Pennhurst and § 1983, rights that are not, as respondent suggests, beyond the competence of the judiciary to enforce.

Wright, supra, 479 U.S. at 431-432, 107 S.Ct. at 774-775. In contrast, this Court in Suter v. Artist M., 503 U.S. 347, 112 S.Ct. 1360, 1369, 118 L.Ed.2d 1 (1992), held a provision of Title IV-E requiring states to make reasonable efforts to preserve families failed to create an enforceable right specifically because the duties imposed on the state were not set forth in regulations: "What is significant is that the regulations are not specific, and do not provide notice to the States that failure to do anything other than submit a plan with the requisite features, to be approved by the Secretary, is a further condition on the receipt of funds from the Federal Government." The Court below faithfully followed the holdings of this Court in looking to duly authorized and promulgated regulations in determining whether Title IV-D imposes obligations with sufficient clarity to create enforceable rights.

Petitioner relies heavily on this Court's decision in Pennhurst State School v. Halderman, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981). In that case, this Court held that § 6010 of the Developmentally Disabled Assistance and Bill of Rights Act does not create enforceable rights primarily because compliance with that section is not, in any way, a condition for the receipt of federal funds. This Court noted the contrast with other provisions of the Act: "When Congress intended to impose conditions on the grant of federal funds, as in §§ 6005, 6009, 6011, 6012, 6063 and 6067, it proved capable of doing so in clear terms. Section 6010, in marked contrast, in no way suggests that the grant of federal funds is 'conditioned' on a State's funding the rights described therein." Pennhurst, supra, 451 U.S. at 23, 101 S.Ct. at 1543. The Court's decision establishes that

whether compliance with a statute is a condition for the receipt of federal funds is a very significant factor in determining whether the statute creates enforceable rights. Contrary to petitioner's argument in this case, however, there is nothing in the Pennhurst decision or other decisions of this Court to suggest a statute only creates enforceable rights if the receipt of federal funds is conditioned on total and absolute compliance with the statutory duties. Indeed, only "a failure to comply substantially" with those provisions of the Developmentally Disabled Assistance and Bill of Rights Act of 1975, acknowledged in Pennhurst as creating enforceable rights, will result in a loss of federal funds. 42 U.S.C. § 6027. Because compliance with Title IV-D, including regulations issued by the Secretary, is an express condition for the receipt of federal funds, there is no conflict between the decision below and the decisions of this Court.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied

Respectfully submitted,

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IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

PATRICIA DAVIS, ELLA LARITA LILLARD, PATRICIA NORTHCUTT, and MARIETTA TURNER, on their own behalves and on behalf of all persons similarly situated,	)	
Plaintiffs,	)	
vs.	)	NO. 92-3314 - I
JOYCE McCLARAN, Director, Child Support Services, Tennessee Department of Human Services, VICTOR S. JOHNSON, III, District Attorney General for the Twentieth Judicial District, and THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,	)	
Defendants.	)	

CLASS ACTION COMPLAINT

INTRODUCTION

1. This Complaint seeks declaratory and injunctive relief to enforce plaintiffs' rights, under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et. seq., to assistance in collecting child support. Pursuant to Title IV-D, defendant Joyce McClaran is responsible for the state-wide operation of a child support services delivery system which meets federally mandated minimum standards. Pursuant to a contract (attached hereto as Exhibit A) with defendant McClaran, defendant Victor S. Johnson, III, is required to provide child support services to residents of Davidson County, Tennessee. With the knowledge and acquiescence of defendant McClaran, defendant Johnson has failed to assign adequate staff to the Child Support Services Division of the Davidson County District Attorney's Office and has failed to meet federally mandated minimum standards for the provision of child support services. Despite an anticipated profit from the provision of child support services of $182,281.00 during the current fiscal year, defendant Johnson has assigned less than one third of the staff needed to fulfill

his contractual obligations. Defendant Johnson actually collects child support, in any amount, in only 4% of his open child support cases. As a result of the defendants' actions and omissions, plaintiffs have been deprived of child support income needed to maintain a subsistence standard of living and some plaintiffs have been forced to rely upon welfare assistance. Plaintiffs have suffered and continue to suffer irreparable harm for which they have no adequate remedy at law.

JURISDICTION

2. The court has jurisdiction pursuant to T.C.A. §§ 16-11-101, 16-11-102, and 16-11-103. Declaratory relief is authorized by T.C.A. § 29-14-102. Mandamus relief is authorized by T.C.A. § 29-25-101. Injunctive relief is authorized by 42 U.S.C. § 1983.

PARTIES

3. Defendant Joyce McClaran is the Director of the Child Support Services Division of the Tennessee Department of Human Services and is sued in her official capacity.

4. Defendant Victor S. Johnson, III, is the Tennessee District Attorney General for the Twentieth Judicial District and is sued in his official capacity.

5. Defendant The Metropolitan Government of Nashville and Davidson County is a public corporation and a nominal party to the contract between defendants McClaran and Johnson. As such, The Metropolitan Government of Nashville and Davidson County is responsible for the actions of defendant Johnson and is a necessary party to this action.

6. Plaintiffs Patricia Davis, Ella Larita Lillard, Patricia Northcutt, and Marietta Turner, are residents of Davidson County who have been deprived by defendants of child support services to which they are entitled under law.

7. Pursuant to Rule 23 of the Tennessee Rules of Civil Procedure, plaintiffs bring this action on their own behalf and

on behalf of a class composed of Davidson Coun residents who are now or who in the future will be entitled to child support services under Title IV-D of the Social Security Act.

8. The proposed class is so numerous that joinder of all members would be impracticable. Approximately 12,000 families in Davidson County, Tennessee, receive AFDC benefits and, as a result, are automatically eligible for Title IV-D services. Defendant Johnson has approximately 67,000 open child support cases.

9. There are questions of law and fact common to the class. A common question of law is whether defendants are obligated to provide child support services to members of the plaintiff class as described below. A common question of fact is whether defendants actually provide child support services as required by law.

10. The claims of the named plaintiffs are typical of the claims of the class. There is nothing unusual regarding the claims of the named plaintiffs which would place their interests in conflict with the interests of the plaintiff class.

11. The named plaintiffs are represented by competent counsel and will fairly and adequately protect the interests of the class.

12. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

STATUTORY AND REGULATORY BACKGROUND

13. Pursuant to 42 U.S.C. § 602(a)(26) and T.C.A. § 71-3-124, parents and children who receive AFDC benefits are required to assign their rights to child support to the State of Tennessee. Families receiving AFDC benefits are entitled to a bonus payment equal to the first $50.00 per month of child support collected. 42 U.S.C. § 657(b)(1).

14. Pursuant to T.C.A. § 71-3-104, AFDC benefits in Tennessee are equal to a percentage of an annually determined amount referred to as the "standard of need." For example, at the present time, the standard of need for a family of three is $426.00 per month and the maximum AFDC benefit is 43.5% of the standard of need or $185.00 per month.

15. Pursuant to T.C.A. § 71-3-104(g), the Tennessee Department of Human Services has issued regulations which permit a family receiving AFDC to receive child support collected each month up to the difference between the family's countable income and the standard of need.

16. Pursuant to 42 U.S.C. § 602(a)(27), a state which elects to participate in the Aid to Families With Dependent Children Program (AFDC) must operate a child support program in compliance with Title IV-D of the Social Security Act, 42 U.S.C. § 651 et. seq. (Title IV-D).

17. Pursuant to 42 U.S.C. § 652(a), the United States Department of Health and Human Services is required to establish by regulation standards for child support services programs under Title IV-D. Those regulations have for force and effect of federal law. (For the court's convenience, a complete set of the applicable regulations, 45 C.F.R., Part 302 and Part 303 is filed herewith as Exhibit B, and incorporated by reference.)

18. Pursuant to 45 C.F.R. §§ 302.10 and 302.12, a participating state must establish a single and separate organizational unit to be responsible for the provision of child support services throughout the state.

19. Pursuant to 45 C.F.R. § 302.31, a participating state is required to provide child support services to all individuals receiving Aid for Families with Dependent Children.

20. Pursuant to 45 C.F.R. § 302.33, a participating state is required, upon application, to provide child support services to any individual seeking help in the collection of child support.

21. Pursuant to 45 C.F.R. § 303.2, a participating state must, within twenty days of receiving a referral of an individual receiving Aid for Families with Dependent Children or an application for child support services, solicit necessary information and open a case file in which all future case activity must be documented.

22. Pursuant to 45 C.F.R. § 303.3, a participating state must use all available means of locating an absent parent within seventy-five days of determining that location information is needed and, if unable to initially locate an absent parent, must repeat location efforts at least every three months and whenever new information which might aid in locating an absent parent is received.

23. Pursuant to 45 C.F.R. § 303.5, a participating state is required to file petitions to establish paternity within ninety days of determining that such a petition is necessary or within ninety days of locating an alleged father and is required to determine paternity within twelve months of successful service of a paternity petition.

24. Pursuant to 45 C.F.R. § 303.4(d), a participating state is required to establish a support obligation or commence proceedings to establish a support obligation within ninety days of establishing paternity or locating an absent parent.

25. Pursuant to 45 C.F.R. § 303.6, a participating state must monitor cases with established support orders and identify any case with a child support arrearage equal to at least one month of child support. Within thirty days of identifying a case at least one month in arrears, the state must take appropriate enforcement action not requiring service of process. Within sixty days of identifying a case at least one month in arrears or locating an absent parent, a state must attempt service of process if necessary for enforcement of a support obligation.

The state must annually submit all cases with an arrearage of at least one month of support for federal income tax refund intercept. If a state is unable to enforce a child support obligation, it must determine the reason enforcement efforts have failed and determine an appropriate time for further enforcement efforts.

26. Pursuant to 45 C.F.R. § 303.20, a participating state is required to ensure the availability of sufficient staff at the state and local levels to provide child support services within the regulatory time frames.

27. The Tennessee Department of Human Services has issued a Child Support Services Manual containing instructions which are binding on contractors providing child support services. That manual requires that contractors permit inspection of their child support case files by authorized counsel for recipients of IV-D services.

28. Pursuant to T.C.A. § 36-5-107, agencies participating in the Title IV-D program are required to utilize at least 70% of any federal incentive payments received to encourage and improve the cost effectiveness of child support enforcement efforts.

29. Pursuant to T.C.A. § 8-21-403, a clerk of court receiving child support payments is entitled to receive a fee equal to 5% of such payments.

FACTUAL ALLEGATIONS RELEVANT TO PLAINTIFFS AND THE PROPOSED CLASS

30. The Child Support Services Division of the Tennessee Department of Human Services is the single state agency responsible for the provision of child support services in Tennessee pursuant to Title IV-D.

31. Pursuant to a contract between the Tennessee Department of Human Services and defendant Victor S. Johnson,

III. District Attorney General for the Twentieth Judicial District of Tennessee, defendant Johnson is responsible for providing child support services to residents of Davidson County Tennessee which fully comply with Title IV-D and its implementing regulations.

32. Pursuant to the contract referred to above, approximately every six months the Child Support Services Division has reviewed a random sample of defendant Johnson's child support case files to determine whether defendant Johnson has complied with Title IV-D requirements in at least 75% of all cases. Each of six separate reviews since March of 1988 have found multiple and significant failures by defendant Johnson to meet the regulatory child support standards in at least 75% of the cases reviewed. True and correct copies of the correspondence between the defendants regarding these reviews are filed herewith as Exhibit C and incorporated by reference.

33. Despite the review findings in Exhibit C, defendant McClaran has not taken any action to ensure that residents of Davidson County receive adequate child support services.

34. Despite his repeated submission of corrective action plans since May of 1988 (see Exhibit C), defendant Johnson has failed to comply with the requirements of his contract and with the requirements of Title IV-D.

35. In January of 1992, the Maximus Corporation evaluated the Tennessee Child Support Services System at the request of defendant McClaran. (A copy of the report from the Maximus Corporation is filed herewith as Exhibit D and incorporated by reference.)

36. The Maximus Report found that defendant Johnson had 58,011 open child support cases and a full time equivalent child support staff of 28. Defendant Johnson was actually collecting child support in only 4% of all open cases. The report recom-

mended that defendant Johnson increase his staffing level by over 300% to the equivalent of 95 full time positions in order to meet his contract and Title IV-D obligations.

37. Defendant Johnson's proposed budget for the fiscal year beginning July 1, 1992, sought a total of seven additional child support positions. That same budget projected child support collection expenses of $675,282.00 and reimbursements, including federal incentive payments of $857,563.00.

38. In addition, the Davidson County Circuit Court Clerk and Juvenile Court Clerk will receive fees in the approximate amount of $450,000.00 as a result of defendant Johnson's child support collections. Those fees far exceed the cost of receiving and disbursing child support.

39. On information and belief, defendant Johnson has failed to utilize at least 70% of his federal incentive payments to improve child support collection services required by T.C.A. § 36-5-107.

40. Defendant Johnson has never requested from local or state authorities permission to hire adequate staff for filling his child support services obligations.

41. Defendant Johnson has persistently failed to provide child support services meeting the minimum standards of Title IV-D as required under his contract with the Tennessee Department of Human Services.

42. Defendant McClaran has known since at least 1988 that child support services meeting the requirements of Title IV-D have not been provided to Davidson County residents and has failed to insure the availability of those services. In addition, the federal government has taken no action to insure the availability of child support services to Davidson County residents.

43. As a result of the defendant's actions and omissions, plaintiffs and members of the proposed class have been deprived of child support income and, in some cases, required to subsist

on welfare benefits. Plaintiffs have suffered ..d continue to suffer irreparable harm. Plaintiffs have on adequate remedy at law.

44. On information and belief, defendents believe that approval of successive corrective action plans prepared by defendant Johnson since 1988 satisfies their obligations under Title IV-D despite their persistent failure to provide child support services meeting minimum standards. Plaintiffs disagree and assert that defendents failure to meet Title IV-D requirements since 1988 is in clear violation of the law.

FACTUAL ALLEGATIONS RELEVANT TO THE NAMED PLAINTIFFS

45. Plaintiff Patricia Davis gave birth to Latasha Davis on June 30, 1979. She has not been married to Latasha's father, Billy Stewart, and has received AFDC for Latasha since she was born. Ms. Davis sought assistance from defendant Johnson in establishing paternity and setting a support obligation while Latasha was still an infant.

46. In 1983 or 1984, defendant Johnson's agents assisted Ms. Davis in establishing that Mr. Stewart is Latasha's father. Defendant Johnson's agents made no effort to establish a child support obligation until 1991 when they filed a petition to set support in the Juvenile Court of Davidson County.

47. Following a hearing on October 29, 1991, the Juvenile Court for Davidson County entered an order requiring Mr. Stewart to pay support in the amount of $142.00 per month by income assignment. The Clerk of Court was unable to serve the income assignment order and Mr. Stewart failed to make any child support payments directly to the Clerk of Court. Despite knowing Mr. Stewart's home address, defendant Johnson's agents have made no efforts to enforce the child support order.

48. Plaintiff Davis has another child, Thaddeus Davis, born on August 23, 1982. Ms. Davis has not been married to the child's father, Thaddeus Smyer, and has received AFDC for the

child since he was born. Although Mr. Smyer's home address and likely place of employment have been known, defendant Johnson's agents have never offered assistance in establishing paternity or support.

49. Defendant Johnson's agents have refused to allow Ms. Davis' counsel to review his file on her. On information and belief, defendant Johnson's agents have done nothing further to enforce the child support obligation of Mr. Stewart or to establish a child support obligation against Mr. Smyer.

50. Plaintiff Ella Larita Lillard is the mother of Kimberly M. Waters. In 1980 Ms. Lillard obtained a divorce from Kimberly's father, Michael Eugene Gordon and he was ordered to pay child support of $20.00 per week plus the Clerk's fee of 5% beginning September 5, 1980. Kimberly's father has only made a total of $787.00 in payments with respect to this child support obligation.

51. For the last several years Ms. Lillard has repeatedly contacted defendant Johnson's office asking for assistance in enforcing the child support order and also inquiring as to the status of the father's IRS Tax Returns which were intercepted by his office. She was repeatedly told that her case was closed and that nothing could be done. Approximately eight or nine months ago she was told that her case would be reopened and she would be called back but she has never heard anything from defendant Johnson's office with respect to this. She has repeatedly informed the office of the father's home address where he has lived ever since the parties divorce in 1980. She has also repeatedly informed the Child Support Office that the father is working. However, to the best of Ms. Lillard's knowledge, defendand Johnson's office has taken no action whatsoever to enforce the father's child support obligation.

52. Plaintiff Patricia Northcutt is the mother of a thirteen year daughter, Brandy Dixon. Ms. Northcutt separated from Brandy's father, Ronald F. Dixon in 1983 and obtained a

divorce from Mr. Dixon in 1987. Mr. Dixon has made no signficant child support payments since the separation in 1983.

53. Since 1983, Ms. Northcutt has made repeated efforts to obtain help in collecting child support from defendant Johnson's agents. She has frequently been told that defendant Johnson's agents had too many child support cases and not enough staff to handle all cases. Defendant Johnson's agents frequently said that they could not assist Ms. Northcutt because they could not locate Mr. Dixon. On at least four occasions, Ms. Northcutt has located Mr. Dixon and notified defendant Johnson's agents of his whereabouts. On each occasion, defendant Johnson's agents failed to take any action against Mr. Dixon.

54. Most recently, in late August of 1992, Ms. Northcutt saw Mr. Dixon at a grocery store and wrote down the license plate number of his vehicle. She immediately provided this information to defendant Johnson's agents and defendant Johnson's agents were able to obtain a home address for Mr. Dixon. As of October 6, 1992, defendant Johnson's agents had failed to take any action to enforce Mr. Dixon's child support obligation. Agents of defendant Johnson told Ms. Northcutt at various times that they had too many cases to handle or that her file had been misplaced. Around September 22, 1992, Ms. Northcutt spoke with a Mr. McDonald, an agent of defendant Johnson, who promised to call her back with information regarding her case within three days. Ms. Northcutt had not heard from Mr. McDonald as of October 6, 1992.

55. Defendant Johnson's agents have refused to allow Ms. Northcutt's counsel to review his file on her. On information and belief, defendant Johnson's agents have done nothing to enforce the child support obligation of Mr. Dixon.

56. Plaintiff Marietta Turner has three children, Carioni Turner, age 11; Demetria Turner, age 10; and Thomas Turner, III, age six. Pursuant to a divorce decree entered in the Fourth

Circuit Court for Davidson County, Tennessee. In September of 1989, the children's father, Thomas L. Turner, Sr., is obligated to pay child support in the amount of $346.66 per month.

57. Ms. Turner sought assistance from defendant Johnson's agents after December of 1989 when Mr. Turner stopped paying child support. In January of 1990, defendant Johnson's agents assisted Ms. Turner in filing a petition under the Uniform Reciprocal Enforcement of Support Act (URESA), which was forwarded to the child support agency in the state of Arizona where Mr. Turner resides.

58. Since January of 1990, Ms. Turner has made repeated unsuccessful attempts to obtain information from defendant Johnson's agents regarding the status of her URESA petition.

59. Defendant Johnson's agents have refused to allow Ms. Turner's counsel to review his file on Ms. Turner. On information and belief, defendant Johnson's agents have done nothing further to enforce Ms. Turner's child support order.

CLAIMS FOR RELIEF

60. The acts and omissions of the defendants as alleged herein deprive plaintiffs under color of state law of rights secured to them by Title IV-D of the Social Security Act in violation of 42 U.S.C. § 1983.

61. Each defendant has a clear and non-discretionary duty to provide child support services meeting the requirements of Title IV-D. Plaintiffs seek a writ of mandamus requiring defendants to perform their duties.

62. Defendant Johnson has a clear and non-discretionary duty to utilize at least 70% of his federal incentive payments to improve child support collection services as required by T.C.A. § 36-5-107. Plaintiffs seek a writ of mandamus requiring defendant Johnson to perform his duty.

63. The parties are in disagreement regarding the extent of the defendants' obligation to provide child support services and the adequacy of services provided. Plaintiffs seek a

declaratory judgment to resolve this dispute wit. ıe defendants and declare their rights under the laws and regulations cited herein.

64. Plaintiffs are third party beneficiaries of the contract between the defendants and seek to enforce their rights under that contract.

65. Defendant Johnson's failure to provide plaintiffs with notice regarding the status of their cases or to allow plaintiffs' counsel to inspect their child support files deprives plaintiffs of due process rights in violation of 42 U.S.C. § 1983, the Fourteenth Amendment to the United States Constitution, and Article I, Section 8 of the Tennessee Constitution.

WHEREFORE, PLAINTIFFS PRAY:

1. That process be issued requiring defendants to answer this complaint;

2. That this action be certified as a class action;

3. That plaintiffs be awarded preliminary and permanent injunctive relief, and/or a writ of mandamus, requiring defendants to provide child support services as required by Title IV-D of the Social Security Act;

4. That the court declare that defendants are obligated to provide child support services meeting the requirements of Title IV-D of the Social Security Act and that defendants have failed to fulfill that duty;

5. That defendants be ordered to pay the cost of this cause, including plaintiffs' reasonable attorney fees; and

6. For such other or additional relief as the court finds to be just and proper.

DAVID A. ETTINGER, TN BAR #: 6566
RUSSELL J. OVERBY, TN BAR #: 2520
Legal Services of Middle Tennessee, Inc.
211 Union St., Suite 800
Nashville, TN 37201
Telephone: (615) 244-6610
Attorneys for Plaintiffs

VERIFICATION

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, PATRICIA DAVIS, do solemnly swear that the statements made in the foregoing Complaint are true to the best of my knowledge, information, and belief; that I am a resident of the State of Tennessee; that owing to my poverty I am not able to bear the expenses of the action I am about to commence; and that I am justly entitled to the relief sought to the best of my belief.

Patricia A Davis
PATRICIA DAVIS

Sworn to and subscribed before me this 8th day of October, 1992.

NOTARY PUBLIC

My commission expires: Nov. 25, 1995

VERIFICATION

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, ELLA LARITA LILLARD, do solemnly swear that the statements made in the foregoing Complaint are true to the best of my knowledge, information, and belief; that I am a resident of the State of Tennessee; that owing to my poverty I am not able to bear the expenses of the action I am about to commence; and that I am justly entitled to the relief sought to the best of my belief.

Ella L. Lillard
ELLA LARITA LILLARD

Sworn to and subscribed before me this 5th day of November, 1992.

NOTARY PUBLIC

My commission expires: 11/25/95

VERIFICATION

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, PATRICIA NORTHCUTT, do solemnly swear that the statements made in the foregoing Complaint are true to the best of my knowledge, information, and belief; that I am a resident of the State of Tennessee; that owing to my poverty I am not able to bear the expenses of the action I am about to commence; and that I am justly entitled to the relief sought to the best of my belief.

Patricia L Northcutt
PATRICIA NORTHCUTT

Sworn to and subscribed before me this 26th day of October, 1992.

Notary Public
NOTARY PUBLIC

My commission expires: Nov 25, 1995

VERIFICATION

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, MARIETTA TURNER, do solemnly affirm ~~swear~~ that the statements made in the foregoing Complaint are true to the best of my knowledge, information, and belief; that I am a resident of the State of Tennessee; that owing to my poverty I am not able to bear the expenses of the action I am about to commence; and that I am justly entitled to the relief sought to the best of my belief.

Marietta Turner
MARIETTA TURNER

Sworn to and subscribed before me this 16th day of October, 1992.

D.A. Sh
NOTARY PUBLIC

My commission expires: Dec 25 1995

CERTIFICATE OF SERVICE

I, David A. Ettinger, certify that a true and exact copy of the foregoing Motion For Leave to Proceed In Forma Pauperis, Declaration of Patricia Davis, Declaration of Ella Larita Lillard, Declaration of Patricia Northcutt, Declaration of Marietta Turner, and Brief in Opposition was sent by first class postage prepaid mail to Charles W. Burson, 500 Charlotte Avenue, Nashville, Tennessee 37243-0497, attorney for Petitioner Joyce McClaran; that all parties required to be served have been served; and that the names, addresses, and telephone numbers of counsel are as follows:

Charles W. Burson
Attorney General and Reporter
State of Tennessee
500 Charlotte Avenue
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Attorney for Petitioner Joyce McClaran

David A. Ettinger
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211 Union Street, Room 800
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Telephone: (615) 244-6610

Attorney for Respondents Patricia Davis, Ella Larita Lillard, Patricia Northcutt, and Marietta Turner

this 2nd day of February, 1996.

David A. Ettinger